United Nations S/2001/1218

Security Council

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19 December 2001

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Letter dated 14 December 2001 from the Permanent Representative of Uganda to the United Nations addressed to the President of the Security Council

The Government of Uganda wishes to make the following comment in response to the letter from the Chargé d'affaires a.i. of the Republic of the Sudan addressed to the President of the Security Council (S/2001/113).

Uganda has been affected by terrorism for a long time. A combination of all terrorist acts committed by the Allied Democratic Forces (ADF), who are backed by the Sudan and trained by al-Qa'idah, and the Lord's Resistance Army (LRA), who are based in and trained by the Sudan, have resulted in a staggering 30,839 persons abducted, 11,110 of whom are children. This is not taking into account those killed, maimed or unaccounted for. Many United Nations agencies, including the United Nations Children's Fund (UNICEF), have repeatedly appealed to those who give aid and comfort to the terrorists to return Uganda's innocent children.

Uganda, therefore, welcomes the decision of the United States of America to include the two main perpetrators of terror in Uganda, the Allied Democratic Forces and the Lord's Resistance Army, on the Terrorist Exclusion List. Uganda also thanks the United Kingdom of Great Britain and Northern Ireland for its action against the bank accounts of the Lord's Resistance Army.

Uganda takes this opportunity to call upon the international community to fight and defeat international terrorism, including these heartless enemies of humanity and civilization.

I should be grateful if you would have the text of the present letter circulated as a document of the Security Council.

(*Signed*) Semakula **Kiwanuka**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Uganda to the United Nations

0630 (E) 201201

United Nations S/2001/1219

Security Council

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20 December 2001
English
Original: French

Letter dated 19 December 2001, from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Gabon, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

01-70969 (E) 281201 281201

Annex

Note verbale dated 18 December 2001 from the Permanent Mission of Gabon to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Gabon to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit herewith the report on action taken by the Government of Gabon in implementation of the resolution (see appendix).

Appendix

Report on action taken by Gabon in implementation of Security Council resolution 1373 (2001)

The entire Gabonese community was deeply outraged at the horrifying terrorist attacks of 11 September 2001 in the United States.

On that fateful day, on which terrorists struck at the financial and military core of the United States and at its people, burying thousands of men and women under tons of steel and rubble at the Twin Towers in New York and at the Pentagon in Washington, the Office of the President of Gabon issued a communiqué stating that "the Head of State and the people of Gabon join as one with the international community in condemning these terrible acts in the strongest possible terms. Profoundly shocked, the President of the Republic, Mr. El Hadj Omar Bongo, presents his sincere condolences to the President of the United States, Mr. George W. Bush, to the Government and people of the United States, and to the families of the victims".

In solidarity with the international community, the Government of Gabon, meeting as the Council of Ministers on 5 October 2001, approved the establishment of an ad hoc committee for the implementation of Security Council resolution 1373 (2001) of 28 September 2001 on international terrorism and adopted a set of diplomatic, legal, security and financial measures.

I. Diplomatic action

The President of the Republic, Mr. El Hadj Omar Bongo, after addressing to his United States counterpart, Mr. George W. Bush, a personal message of solidarity and support, gave the Minister of State and Minister for Foreign Affairs, Cooperation and Francophonie instructions with a view to the establishment of a crisis committee to monitor developments day by day, while serving as a permanent interface between diplomatic missions and the Gabonese authorities.

This crisis committee, which is chaired by the Minister of State and Minister for Foreign Affairs, Cooperation and Francophonie, is made up of the Ministers of the Interior, Defence, Justice and Transport, and the representatives of the Office of the President and of the Office of the Prime Minister.

In implementation of Security Council resolution 1373 (2001), a focal point was set up in order to facilitate contacts between the interlocutors. The individuals designated for this purpose are as follows:

At the level of the central services:

- Mr. Marc Adolphe Doumi Mandatsi
  General Secretary, Ministry of Foreign Affairs
  Tel: 74-23-74 and 26-10-54
  Fax: 74-23-75

At the level of the Permanent Mission of Gabon in New York:

- Mr. Alfred Moungara Moussoutsi, Counsellor
  Tel: (212) 686 9720
  Fax: 689-57-69

The diplomatic missions have also given assurances with respect to any relevant information, and the contact persons at the Ministry of Foreign Affairs are as follows:

- The General Secretary (26-10-54)
- The Director, United States (76-17-44 and 26-10-46)

In Africa, Gabon welcomed the initiative launched by the Senegalese President, Mr. Abdoulaye Wade, for an African conference on international terrorism.

To that end, the Gabonese delegation led by the Vice-President of Gabon, Mr. Divungui Didjob Di Dinge, played an active role in the work of the conference, held in Dakar from 15 to 17 October 2001.

The Gabonese delegation took a consistent position in that connection: consistently condemning terrorism, one of the worst forms of human barbarity, and consistently stating that terrorism cannot be justified by any particular circumstances.

Gabon believes that the Convention of the Organization of African Unity on the Prevention and Combating of Terrorism, adopted in Algiers on 14 July 1999, has been an adequate instrument for effectively

combating this barbarous evil in Africa. The Convention can be amended, if necessary, to take account of the new international situation and of Security Council resolution 1373 (2001).

Addressing the United Nations General Assembly, at its fifty-sixth session, Mr. Jean Ping, Minister of State and Minister for Foreign Affairs, Cooperation and Francophonie reaffirmed Gabon's determination to combat international terrorism by all possible means, whether military, diplomatic or political.

Accordingly, Mr. Ping continued, Gabon unreservedly supported Security Council resolutions 1368 (2001) and 1373 (2001), as well as the adoption of a general convention on terrorism.

He said that the coalition that had been set up could unquestionably help in the struggle against terrorism.

Also as a matter of solidarity, the international community must find appropriate solutions to international problems that might be used as pretexts by certain radical groups.

In conclusion, Mr. Ping said it was urgent to take appropriate action with a view to finding solutions to current conflicts and economic and social problems.

II. Legislative action

The Ministry of Foreign Affairs, Cooperation and Francophonie proposed that the Government should consider updating the current legislation, particularly the Criminal Code and the Code of Criminal Procedure, to enable Gabonese courts to suppress terrorism effectively, a matter that is not expressly covered in current Gabonese positive law.

The desirability of implementing this proposal was recognized *erga omnes*, and an in-depth feasibility study of the matter is being carried out by Ministry of Justice experts.

Gabon has also set in motion the process of acceding to and ratifying most of the international instruments directly or indirectly connected with combating international terrorism.

The following instruments were thus adopted by the Council of Ministers with a view to their expeditious transmission to Parliament for ratification:

- The Tokyo Convention of 1963 on Offences and Certain Other Acts Committed on Board Aircraft;
- The Montreal Convention of 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the 1984 Protocol thereto;
- The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the United Nations General Assembly on 14 December 1973;
- The Convention against the Taking of Hostages, adopted by the General Assembly on 17 December 1979;
- The Vienna Convention of 1980 on the Physical Protection of Nuclear Material;
- The Montreal Protocol of 1988 for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, which complements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- The Rome Protocol of 1988 for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf;
- The Rome Convention of 1988 for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;
- The Montreal Convention of 1991 on the Marking of Plastic Explosives for the Purpose of Detection;
- The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly on 15 December 1997;
- The Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly in New York on 9 December 1999;
- The Convention of the Organization of African Unity on the Prevention and Combating of Terrorism.

III. Security measures

On the evening of 11 September, the very day on which the New York and Washington attacks took

place, security coverage was stepped up outside United States diplomatic premises and United States diplomats' residences, in Gabon and outside the diplomatic missions and consular posts in Gabon of the countries belonging to the anti-terrorism coalition.

The security and intelligence services were placed on alert and surveillance was strengthened so as to ensure better protection of persons and property.

Appropriate instructions were given concerning intelligence, in order to establish cooperation and the exchange of information with the various governments forming part of the coalition with respect to security issues.

Surveillance and control at Libreville International Airport and the port of Owendo were stepped up and strengthened by means of additional security personnel.

This increased vigilance was extended not only to airfields in the interior of the country, but also to inter- and intra-urban police controls and to land, maritime and river border controls.

In early December, at the request of Gabon, the French police department for international technical cooperation sent two experts from Paris to provide comprehensive training in detecting false travel papers, not only for immigration department personnel of the aviation and border police, but also for personnel involved in aeronautical sector operations.

Furthermore, a study will be conducted with a view to identifying all security problems, particularly as regards the vulnerability of the Léon Mba International Airport in Libreville.

At the level of surveillance within Gabonese territory, monitoring has been strengthened with respect to high-risk individuals and groups belonging to foreign communities likely to breach Gabonese internal security.

An exhaustive census has been conducted of nationals of so-called high-risk countries and of Gabonese nationals who have stayed or studied in such countries and may have maintained links with them.

The Economic Intervention Service, whose purpose with respect to economic and financial matters is to carry out monitoring in the area of financial flows, particularly as regards corruption and money-laundering, will be operational shortly.

IV. Financial action

The Ministry for Economic and Financial Affairs has given strict instructions to banking establishments with a view to achieving more stringent monitoring of assets and currency movements, with the aim of tracking all types of direct or indirect financing of terrorist activities based in Gabon.

These measures, under the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999, provide unquestionable proof of the Gabonese authorities' firm intention to accede to and implement this important international instrument.

Conclusion

The action taken and legislation adopted recently by Gabon demonstrate, should it be necessary, the country's determination to combat terrorism in all its forms, by contributing to international efforts undertaken particularly with a view to halting the flow of funds for financing terrorism.

To that end, Gabon will as in the past fully implement the relevant United Nations resolutions and further emphasize its cooperation in the endeavour to combat terrorism that has been initiated with the United States authorities.

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Security Council

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21 December 2001
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Letter dated 19 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from the United States of America, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

01-71000 (E) 261201 030102

Annex

[Original: English]

United States of America

Report of the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001: implementation of resolution 1373 (2001)

INTRODUCTION AND SUMMARY

On the day after the heinous September 11 terrorist attacks in Washington and New York, the General Assembly of the United Nations, by consensus of the 189 member states, called for international cooperation to prevent and eradicate acts of terrorism and to hold accountable the perpetrators and those who harbor or support them. That same day, the United Nations Security Council unanimously determined, for the first time ever, any act of international terrorism to be a threat to international peace and security. This determination laid the foundation for Security Council action to bring together the international community under a common set of obligations in the fight to end international terrorism.

On September 28, 2001, the Security Council unanimously adopted Resolution 1373 under Chapter VII of the Charter of the United Nations. This historic resolution established a body of legally binding obligations on all UN member states. It defined the common core of the new international campaign to deal with international terrorists, their organizations, and those who support them.

Its provisions require, among other things, that all member states prevent the financing of terrorism and deny safe haven to terrorists. States will need to review and strengthen their border security operations, banking practices, customs and immigration procedures, law enforcement and intelligence cooperation, and arms transfer controls. All states are called upon to increase cooperation and share pertinent information with respect to these efforts. Resolution 1373 also mandated that each state report on the steps it had taken, and established a committee of the Security Council to monitor implementation. The committee will highlight best practices, identify gaps, and help coordinate advice and assistance to states that need it.

Full implementation of resolution 1373 will require each UN member state to take specific measures to combat terrorism. Most states will have to make changes in their laws, regulations, and practices. Those with the capacity to assist in these changes will be needed to help those who lack the expertise and resources to achieve full implementation. As this report that follows makes clear, the United States is ready to provide technical assistance to help in these efforts. We will work closely with other nations who also have the capacity to assist, and with those seeking assistance. Cooperation is key to success.

It will be especially important that these efforts be sustained in the coming months and years. The goal should be to ensure through the UN that enduring mechanisms are created, and that existing institutions are utilized, to raise the capabilities of all nations to confront the threat of terrorism. As UNSCR 1373 recognizes, there will be a need for enhanced coordination of efforts on national, subregional, regional and global levels.

The United States is waging a broad-ranging campaign both at home and abroad against terrorism, including by taking military action in Afghanistan. As another way of combating terrorism internationally, the United States strongly supports UNSCR 1373 and the Counter Terrorist Committee set up by the resolution, and wishes to see full implementation by all states. As President Bush has promised: "We will direct every resource at our command -- every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence, and every necessary weapon of war -- to the disruption and to the defeat of the global terror network."

Our report details only some of the many steps that we have been taking to combat terrorism and comply with UNSCR 1373. But, we intend to do even more to ensure that we have taken all

appropriate measures. The following is a list of some of the steps taken, which are detailed in this report.

Steps taken by the U.S.

- On September 23, Executive Order (E.O.) 13224, froze all the assets of 27 foreign individuals, groups, and entities linked to terrorist acts or supporting terrorism and authorized the freezing of assets of those who commit, or pose a significant threat of committing, acts of terrorism.

- On September 28, the U.S. sponsored the UN Security Council Resolution 1373, calling on all UN members to criminalize the provision of funds to all terrorists, effectively denying terrorists safe financial haven anywhere.

- On October 5, the Secretary of State, in consultation with the Attorney General and the Secretary of the Treasury, redesignated 25 terrorist organizations (including al-Qaeda) as foreign terrorist organizations pursuant to the Antiterrorism and Effective Death Penalty Act of 1996. Giving material support or resources to any of these foreign organizations is a felony under U.S. law.

- On October 12, the U.S. added 39 names to the list of individuals and organizations linked to terrorism or terrorist financing under E.O. 13224.

- On October 26, the U.S. enacted the USA PATRIOT Act, which significantly expanded the ability of U.S. law enforcement to investigate and prosecute persons who engage in terrorist acts.

- On October 29, the U.S. created a Foreign Terrorist Tracking Task Force aimed at denying entry into the U.S. of persons suspected of being terrorists and locating, detaining, prosecuting and deporting terrorists already in the U.S.

- On November 2, the U.S. designated 22 terrorist organizations located throughout the world under E.O. 13224, thus, highlighting the need to focus on terrorist organizations worldwide.

- On November 7, the U.S. added 62 new organizations and individuals, all of whom were either linked to the Al Barakaat conglomerate or the Al Taqwa Bank, which have been identified as supplying funds to terrorists.

- On December 4, the U.S. froze under E.O. 13224 the assets and accounts of the Holy Land Foundation in Richardson, Texas, whose funds are used to support the Hamas terrorist organization, and two other entities, bringing the total to 153.

- On December 5, the Secretary of State designated 39 groups as "terrorist organizations" under the Immigration and Nationality Act, as amended by the new USA PATRIOT Act, in order to strengthen the United States' ability to exclude supporters of terrorism or to deport them if they are found within our borders. We call the list of such designated organizations the "Terrorist Exclusion List."

- The U.S. has signed and expects to ratify in the near future the UN Convention for the Suppression of the Financing of Terrorism and the UN Convention for the Suppression of Terrorist Bombings.

- The U.S. has met with numerous multilateral groups and regional organizations to accelerate the exchange of operational information laid out in UNSCR 1373.

- The U.S. has stepped up bilateral information exchanges through law enforcement and intelligence channels to prevent terrorist acts and to investigate and prosecute the perpetrators of terrorist acts.

- Our Federal Bureau of Investigation has created an interagency Financial Investigation Group to examine the financial arrangements used to support terrorist attacks. The FBI headquarters houses this group, which includes analysts and investigators from numerous federal agencies and federal prosecutors with backgrounds in investigating and prosecuting financial crimes.

- The U.S. brought to conclusion the prosecution of four al-Qaeda members for the bombing of U.S. embassies in Dar es Salaam and Nairobi.

- We have designed a new tamper-resistant U.S. visa, and we have upgraded passports to prevent photo substitution.

- We have intensified border discussions with Canada and Mexico to improve border security.

UNSCR 1373 Operative Paragraph 1

1(a): What measures if any have been taken to prevent and suppress the financing of terrorists acts in addition to those listed in your responses to questions on 1(b) to (d)?

The assault on the financial underpinnings of terrorism is central to U.S. efforts to fight terrorists and their supporters with every available weapon. Through the September 23 Executive Order freezing U.S. assets of designated individuals and organizations that commit terrorist acts or fund terrorism, and other measures, the U.S. is taking concrete actions internally to combat the financing of terrorist entities. The U.S. also works closely with governments around the world in identifying and freezing terrorists' assets. The U.S. has contacted almost every other UN Member State to encourage them to identify and freeze terrorist assets through implementation of the UN Security Council Resolutions and other means. A list of U.S. actions is set forth below.

Freezing of Terrorist Assets

- President George W. Bush signed **Executive Order (E.O.) 13224**[1] **on September 23** pursuant to his authority under the International Emergency Economic Powers Act (IEEPA). This order blocks all property and interests in property of foreign persons and entities designated by the President in the Order, or designated by the Secretary of State as committing, or posing a significant risk of committing, acts of terrorism threatening the security of U.S. nationals or U.S. national security, foreign policy, or economy, if that property is either within the U.S. or within the possession or control of U.S. persons.

- The Order also blocks the property and interests in property of persons determined by the Secretary of the Treasury to provide support or services to, or to be associated with, any individuals or entities designated under the Order. The Secretary of the Treasury may also block property and interests in property of persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or under the E.O. Any transaction or dealing by U.S. persons or within the U.S. in property and interests in property blocked pursuant to the Order is prohibited.

- The Order directs the U.S. Government to cooperate and coordinate with foreign governments to suppress and prevent terrorism, to deny financial services and financing to terrorists, and to share intelligence about terrorist financing.

- Under **Section 219 of the Immigration and Nationality Act**[2] (as amended by the Antiterrorism and Effective Death Penalty Act of 1996), the Secretary of State may, in consultation with the Attorney General and the Secretary of the Treasury, designate an organization as a Foreign Terrorist Organization ("FTO") if the organization is a "foreign organization" that "engages in terrorist activity" that "threatens the security of U.S. nationals or the security of the United States". The Department of the Treasury may require U.S. financial institutions possessing or controlling assets of designated FTOs to block all financial transactions involving these assets. Further, it is a federal crime to provide material support to designated FTOs, and certain members of these FTOs are not allowed to enter or remain in the U.S.

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[1] For further information on U.S. laws, see the following web sites:
http://www.access.gpo.gov/su_docs/aces/dcff001.html#usc (for a database index);
http://www.access.gpo.gov/congress/cong013.html (for U.S. Codes (U.S.C.)); and,
http://www.access.gpo.gov/su_docs/aces/dcff001.html#cfr (for the Combined Federal Register (CFR))

[2] 8 U.S.C. § 1189

- Under **Executive Order 12947 of January 23, 1995**, as amended by E.O. 13099 of August 20, 1998, the President designated sixteen organizations, and authorized the Secretary of State to designate additional foreign individuals or entities who have committed, or pose a significant risk of committing, acts of violence with the purpose or effect of disrupting the Middle East peace process, or who have provided support for or services in support of such acts of violence. Designations of terrorism-related organizations and individuals pursuant to the Order, as amended, have continuing validity as actions taken in the U.S. consistent with the objectives of UNSCR 1373.

  The Order further authorized the Secretary of the Treasury to block the property of persons determined to be owned or controlled by, or acting for or on behalf of, persons designated in or under the Order. All property and interests in property of persons designated under the Order in the U.S. or in the control of U.S. persons are blocked. Any transaction or dealing in such blocked property is prohibited.

Designated Terrorists and Their Supporters

- E.O. 13224 includes an annex listing 27 organizations and individuals whose assets are blocked by the E.O. because of their ties to terrorism. An additional 39 individuals and organizations were added on October 12. On November 2, we added to the list 22 terrorist organizations already designated as FTOs, but not previously designated under the Order; 62 more individuals and entities were added on November 7, and three additional entities were listed on December 4, bringing the total to 153. The list will be updated periodically. In addition, a total of 28 terrorist organizations have been designated as FTOs, and 16 individuals and entities have been designated under E.O. 12947.

Improved Coordination at Home

- The U.S. is improving coordination and information sharing internally. The Foreign Terrorist Asset Tracking Center (FTAT), in the Office of Foreign Assets Control at the Department of Treasury, identifies the financial infrastructure of terrorist organizations worldwide to curtail their ability to move money through the international banking system.

- The Federal Bureau of Investigation (FBI) has broadened its investigative efforts on the financial front, in terrorists' use of money laundering, electronic transactions, cyberbanking, and trafficking in valuable gems.

Improving Domestic Tools to Stop Financing Terrorism

- On October 26, President Bush signed into law the **USA PATRIOT Act**,[3] providing for broad new investigative and information sharing between law enforcement and intelligence agencies with respect to terrorist financing. It expands the scope of U.S. regulations against money laundering by requiring securities brokers and dealers to file suspicious activity reports and gives new power to act against money laundering havens. The PATRIOT Act also expands the President's powers to confiscate property under the International Emergency Economic Powers Act (IEEPA) when the U.S. is engaged in armed hostilities or has been attacked.

International Cooperation, Outreach and Coordination

- The U.S. is working to improve international sanctions and anti-money laundering coordination, notably through a multilateral sanctions administrators coordinating group which meets regularly

[3] "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Acts of 2001," Pub. L. No. 107-56, H.R. 3162, 107th Congress (2001)

with the Treasury Department's Office of Financial Assets Control on U.S. and European Union sanctions.

- The U.S. has strong outreach programs to encourage other nations to join this effort. Senior officials have urged strong action in support of the global effort against terrorist financing, including removal of legal or other barriers that might hinder cooperative efforts.

- The U.S. will seek to respond to requests for technical assistance to block terrorist assets, cut off terrorist fund flows, and prevent fund-raising activities which benefit terrorists.

- The U.S. has signed and expects to ratify in the near future the UN Convention for the Suppression of the Financing of Terrorism. Also, the U.S. is a signatory to the UN Convention against Transnational Organized Crime.

Important International Initiatives in which the U.S. Plays a Role

- The U.S. and European Union have developed unprecedented cooperation on counterterrorism since September 11, including close cooperation on the freezing of the assets of terrorists and their supporters, as well as increased assistance in investigations and the sharing of information among law enforcement authorities, increased coordination of measures to strengthen aviation security, further exchanges of ideas on tightening border controls, and increased contact between key judicial and police organizations. Also, a U.S.-EUROPOL Agreement was signed in early December, facilitating the exchange of analytical data.

- The Secretary of State joined with the Foreign Ministers of the other members of the Organization of the American States to approve a resolution on September 21 condemning the terrorist acts of September 11 and expressing the need for hemispheric solidarity and effective measures against terrorism. On October 15, the Inter-American Committee Against Terrorism (CICTE) formed a sub-committee to increase cooperation in tracking the financial assets of terrorists and their supporters. These recommendations will be approved at the CICTE Regular Session in January.

  -- In addition, the Foreign Ministers of States Parties to the Inter-American Treaty of Reciprocal Assistance ("Rio Treaty") adopted a Resolution on September 21 restating their commitment of reciprocal assistance and affirming that measures being taken by the U.S. and other states in reaction to the terrorist attacks of September 11 were in the exercise of their inherent right of individual and collective self-defense.

- In Shanghai last October, leaders of the Asia Pacific Economic Cooperation (APEC) forum responded to President Bush's call for a coalition to defeat terrorism with a strong statement condemning the terrorist attacks in the U.S. They also committed APEC members to implement relevant UN conventions and resolutions and to take specific steps to stop the flow of funds to terrorists and their supporters, and to steps to ensure aviation and maritime security, strengthen energy security, and enhance border security and customs enforcement.

Among the other important initiatives that we participate in are:

- The G-7 finance ministers issued a comprehensive action plan on terrorist financing on October 6, calling for a special Financial Action Task Force (FATF) plenary on October 29-30, and an Egmont Group meeting on October 31. G-7 countries have called for increased international coordination and efforts to combat terrorist financing.

- At its plenary on October 29-30, FATF adopted eight special recommendations focused on combating terrorist financing, and then adopted an action plan to implement them. The overall FATF effort will be reviewed when FATF next meets in Hong Kong in January 2002.

- At its October 31 meeting, the 58 member nations of the Egmont Group of financial intelligence units agreed to expand information sharing on terrorist financing.

- The Finance Ministers and Central Bank Governors of the G-20 adopted on November 17 a comprehensive action plan of multilateral cooperation to deny terrorists and their associates access to, or use of, their financial systems, and to stop any abuse of informal banking networks. The plan also calls on G-20 countries to make public the lists of terrorists whose assets are subject to freezing, and the amount of assets frozen. The Manila Framework Group formally endorsed the G-20 Action Plan during its December 2001 meetings.

- The International Monetary Fund (IMF) has expanded its activities to include efforts aimed at countering terrorist financing. In its November 17 Communiqué, the International Monetary and Financial Committee of the Board of Governors (the IMFC) called on each IMF member to freeze all terrorist assets within its jurisdiction and to implement fully UNSCR 1373. Members should publish monthly reports by February 1, 2002, listing terrorist assets subject to freezing and the amount of assets frozen. Also, the IMF will expand efforts to help countries review and optimize their financial, legal, and institutional frameworks to help ensure that all avenues are closed to terrorism.

- Within the G-8, the Counter-terrorism Experts Group and the Lyon Group held a second special joint session on November 18-20, adding concrete actions, timelines, and responsibilities to the 25-point G-8 Counter-terrorism Action Plan developed earlier by the two groups. The Plan would advance the fight against terrorism in the areas of aviation security, judicial cooperation, and law enforcement. The Groups meet again in February.

- In the area of international aviation security, we participate in the Aviation Security (AVSEC) panel of the International Civil Aviation Organization (ICAO) to enhance worldwide aviation security standards. We will participate in the ICAO Ministerial Conference next February to establish an ICAO audit plan for compliance with Annex 17 to the Chicago Convention (on safeguarding civil aviation against acts of unlawful interference), to upgrade certain recommended security practices, and to seek a greater level of participation in voluntary contributions to the AVSEC fund.

1(b): What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

There are several sources of legal authority for the U.S. government to rely upon in imposing civil and criminal penalties for the provision and collection of funds to provide support to terrorists. These include both laws prohibiting material or other support to terrorists and their supporters, and money laundering laws addressing a variety of criminal activity, including the unlawful movement of money without proper reports.

Providing Support to Terrorism

- Providing "material support" to terrorists or terrorist organizations has been prohibited as a crime since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996. As a result of

the October 26, 2001 enactment of the antiterrorism bill known as the "USA PATRIOT Act", there is now specific authority to forfeit terrorist assets as well, thus providing a direct means to deprive terrorists of their funds.

- U.S. law makes it a crime to provide material support or resources within the U.S. to a person intending that the support or resources will be used, or is in preparation for, the commission of a wide variety of specified terrorism-related crimes.[4] "Material support or resources" is very broadly defined and means "currency or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."[5]
- Property provided as "material support" to a terrorist in violation of 18 U.S.C. § 2339A is subject to forfeiture if it is involved in a transaction or attempted transaction in violation of 18 U.S.C. § 1956-57, or if it is the proceeds of a section 2339A offense.[6]
- In addition, U.S. law[7] prohibits the provision of "material support" to a Foreign Terrorist Organization.[8] A Foreign Terrorist Organization (FTO) may be designated pursuant to section 219 of the Immigration and Nationality Act.[9] Al-Qaida has been designated as an FTO. When a financial institution becomes aware that it has possession of, or control over, any funds in which a Foreign Terrorist Organization, or its agent, has an interest, it shall retain possession or control over the funds, and report the existence of such funds to the Secretary of the Treasury. Failure to do so may result in civil penalties.
- Finally, providing prohibited "material support" is punishable criminally by 15 years imprisonment and/or a fine of up to $250,000 for individuals and $500,000 for organizations.

Money Laundering and Currency Reporting

- Property brought into or taken out of the United States with the intent to promote one of the terrorist acts or other crimes constituting a Specified Unlawful Activity is subject to civil forfeiture.[10] For example, if U.S. Customs agents learned during an investigation that funds raised in the U.S. were sent, or were attempted to be sent, abroad to fund a terrorist action, or funds came into the United States for such a purpose, the funds would be forfeitable.
- Currency and other monetary instruments, including a deposit in a financial institution traceable to those instruments, may be forfeited[11] when a required Currency Monetary Instrument Report has not been filed properly. Pursuant to the USA PATRIOT Act, there is now specific authority to forfeit currency and other monetary instruments if someone "knowingly conceals" those instruments to evade a reporting requirement.[12] The U.S. plans to pursue that authority fully.
- Any person who violates any license, order, or regulation issued pursuant to the International Emergency Economic Powers Act (IEEPA), *i.e.*, the authority under which the President issued Executive Orders 13224 and 12947, may be subject to civil fines, and those who willfully violate, or willfully attempt to violate, any license, order or regulation issued pursuant to IEEPA may be subject to criminal penalties including fines or imprisonment.

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[4] 18 U.S.C. § 2339A
[5] 18 U.S.C. § 2339A
[6] 18 U.S.C. § 981(a)(1)(A) would authorize forfeiture for the transaction offense, and 18 U.S.C. § 981(a)(1)(C) would authorize forfeiture for the proceeds offense.
[7] 18 U.S.C. § 2339B
[8] 12 U.S.C. § 2339B
[9] 8 U.S.C. § 1189
[10] 18 U.S.C. § 981(a)(1)(A) (as property involved in a violation of 18 U.S.C. § 1956(a)(2)(A)
[11] 31 U.S.C. § 5317(e)
[12] 31 U.S.C. § 5332 (the new Bulk Cash Smuggling offense)

1(c): What legislation and procedures exist for freezing accounts and assets at banks and financial institutions?

President George W. Bush signed Executive Order (E.O.) 13224 on September 23 pursuant to his authority under the International Emergency Economic Powers Act (IEEPA). This Order allows for the blocking of property and interests in property of all persons designated pursuant to the Order. Such designations include terrorists, as well as those who provide support or services to, or associate with, persons with terrorism-related links. (See the response to Paragraph 1.a in this report for further detail on E.O. 13224 and other, related measures.)

E.O. 13224 also charged the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, with responsibility for its implementation, including the promulgation of regulations related to the sanctions.

Therefore, designated terrorist property and interests in property, including funds and financial assets or economic resources, within the U.S. or in the possession or control of a U.S. person, are blocked. Any transaction or dealing in the U.S. or by U.S. persons in such blocked property and interests in property are prohibited. Transactions intended to evade the prohibitions imposed in the Executive Order also are prohibited.

- Between September 11 and December 6, 2001, the U.S. blocked a total of 79 financial accounts within the U.S., pursuant to E.O. 13224. The accounts totaled $33.7 million.
- Included in those actions was the November 7 blocking by the Department of the Treasury of the property and interests in property of several financial institutions and accounts -- primarily those of the "Al Barakaat" organization.
- Executive Order 13224 complements and builds upon other legal measures that impose sanctions on terrorists and their supporters. In particular, several terrorists designated under E.O. 13224, and subject to its sanctions, were previously designated in or pursuant to E.O. 12947, as amended.[13] (See the response to Paragraph 1.a in this report for further detail.)
- Blocked property, including blocked funds, that a U.S. person imports, exports, or attempts to import or export may be seized and forfeited by the U.S. Customs Service, as may any merchandise imported contrary to the sanctions.[14] Any conveyance or thing (e.g., a container) facilitating such importation may be seized and forfeited, and any person concerned in the unlawful activity is subject to a penalty equal to the value of the imported goods.[15] U.S. Customs also may seize and forfeit arms, munitions, or "other articles" exported, or attempted to be exported, in violation of law.

1(d): What measures exist to prohibit the activities listed in this sub-paragraph?

- President George W. Bush signed Executive Order (E.O.) 13224 on September 23 pursuant to his authority under the International Emergency Economic Powers Act (IEEPA). This Order allows for the blocking of property and interests in property of all persons designated pursuant to the Order. Such designations include terrorists, as well as those who provide support or services to, or associate with, persons with terrorism-related links. (See the response to Paragraph 1.a in this report for further detail on E.O. 13224 and other, related measures.)

[13] See, e.g., 31 Combined Federal Register (C.F.R.) Part 597
[14] 19 U.S.C. § 1595a
[15] See also 18 U.S.C. § 545 (civil forfeiture for articles imported contrary to law)

- The U.S. Customs Service has formed a financial anti-terrorism task force, known as Operation GREEN QUEST, to identify, disrupt, and dismantle the financial infrastructure of terrorist organizations. In November 2001, Operation GREEN QUEST -- composed of investigators and analysts from U.S. Customs, the Internal Revenue Service (IRS), the Federal Bureau of Investigation (FBI), and the Treasury Department's Office of Financial Assets Control (OFAC) -- coordinated five search warrants. Concurrently, several businesses had their activities and their bank accounts ($1.3 million USD) blocked, i.e., frozen. Intelligence and investigation had indicated the businesses and accounts were paying fees to terrorist organizations. The funds were frozen based on Executive Order 13324 and routine judicial procedures were used to further the criminal prosecution of the individuals and businesses involved.

UNSCR 1373 Operative Paragraph 2

2(a): What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Recruitment

Conspiracy and other laws make it illegal to solicit a person to commit a terrorist act or other crime.[16] Recruiting for membership in a terrorist organization is grounds for denying a visa.[17] A foreign national who enters the United States and is later found in violation of these prohibitions is subject to deportation.

Weapons

- U.S. law contains criminal prohibitions on the acquisition, transfer and exportation of certain firearms.[18] Numerous state and local laws also apply.
- The U.S. Government also requires licenses for the export of defense articles (which includes technical data) and defense services pursuant to the Arms Export Control Act (AECA),[19] which counters the illicit transfer of U.S.-origin defense items to any unauthorized person. Violations of the AECA or its implementing regulations can result in civil and criminal penalties.
- It is a crime under U.S. law to provide material support such as funding and weapons for a terrorist act or to an organization designated by the Secretary of State as a foreign terrorist organization.[20] It is also grounds for denying a visa or removing an individual from the U.S.[21]
- The U.S. government also applies controls to exports and re-exports of sensitive U.S.-origin dual-use items and nuclear-related items pursuant to the statutory authorities of the Department of Commerce and the Nuclear Regulatory Commission. The Department of the Treasury administers and enforces economic sanctions against designated terrorists and those determined to be linked to such terrorists. These sanctions prohibit any transactions or dealings in property or interests in property of terrorism-related entities or individuals, including the exportation or re-exportation of any goods or technology either from the U.S. or by U.S. persons. Violations of these laws or their implementing regulations can result in civil or criminal penalties.

Other Measures

- The U.S. uses a full range of counterterrorism and counterintelligence techniques in preventing terrorist acts, including the use of human and technical sources; aggressive undercover operations; analysis of telephone and financial records; mail; and physical surveillance.
- The intelligence community also tracks terrorist organizations overseas, including attempts to recruit members, and the movement of weapons intended for terrorists and proposed sales to terrorist countries.
- The Customs Service (USCS) exchanges information with companies involved in the manufacture, sale, or export of: munitions or arms, explosive or sensitive materials, restricted communication technologies or equipment, or components of weapons of mass destruction. The USCS meets with

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[16] 18 U.S.C. § 373 makes it a criminal offense to solicit a person to commit a violent crime.
[17] §212(a)(3)(B)(iv)(V) of the Immigration and Nationality Act (INA), 8 U.S.C. §1182
[18] Title 18 of the U.S.C. (Chapter 44 – Firearms) 18 U.S.C. §§ 921, et seq.
[19] 22 U.S.C. §2778 and the International Traffic in Arms Regulations (ITAR)
[20] 18 U.S.C. §§ 2339A, 2339B. Penalties for each violation can include criminal fines and imprisonment of up to fifteen years. As of December 4, 2001, 28 groups are designated as Foreign Terrorist Organizations.
[21] §212(a)(3)(B)(iv)(V) of the Immigration and Nationality Act (INA), 8 U.S.C. §1182

industry experts to obtain their assistance in controlling the export of U.S.-origin high technology and munitions items. This partnership between government and industry enhances national security and fosters effective export controls.

2(b): What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other states?

U.S. law enforcement and intelligence agencies have many active and aggressive information sharing programs to prevent terrorist acts. Congress has mandated expansion of international information sharing on immigration and law enforcement matters in support of worldwide anti-terrorism efforts. Many nations cooperate actively with the U.S. in fighting terrorism.

- Prior to September 11, the U.S. regularly exchanged information on terrorists and specific indications of threats in other states with their intelligence agencies. Since September 11, we have provided expanding streams of information regarding the responsibility for those terrorist attacks, and information about specific terrorist identities and activities through liaison channels. A principal objective is to share vital anti-terrorist information in as timely and effective a manner as possible.
- With some allied governments we share data through bilateral arrangements on known and suspected terrorists to prevent the issuance of visas and to strengthen border security. Expansion of this program is anticipated. We use this program to preclude visa issuance to terrorists, to warn embassies overseas about certain applicants, to alert intelligence and law enforcement agencies, and to enable immigration and customs officials at ports of entry to detect terrorists who may have obtained visas.
- The Immigration and Naturalization Service (INS) has law enforcement officers stationed abroad who conduct liaison with host government immigration, police and security services. INS also maintains a fulltime presence at INTERPOL, working actively with other federal agents in providing information to police agencies worldwide. INS also has bilateral information-sharing arrangements with certain of its counterpart immigration services.
- The Legal Attaché program of the Federal Bureau of Investigation (FBI) enables it to share information on a broad and timely basis. Direct lines of communication have been established between the U.S. and many countries to coordinate investigative resources worldwide.
- The private sector is included in the dissemination of information of possible terrorist threats, particularly in international financial and technology transfer matters related to terrorist activity.
- The FBI has established a Counterterrorism Division to further enhance the FBI's analysis, information-sharing, and investigative capabilities. The FBI is publicizing wanted terrorists through various programs including the Top Twenty Terrorist Program.
- The FBI has created an interagency Financial Investigation Group to examine the financial arrangements used to support the terrorist attacks. The FBI headquarters houses this group, which includes analysts and investigators from numerous federal agencies and federal prosecutors with backgrounds in investigating and prosecuting financial crimes.

2(c): What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph?

Our legislation contains provisions prohibiting admission of foreign nationals who have engaged in terrorist activity. It provides for removal of such persons if they are in the U.S. Also, foreign nationals who are closely associated with or who support terrorist activity can also be denied admission or removed in certain circumstances (e.g. foreign nationals who act as representatives of foreign terrorist organizations or of certain groups that publicly endorse acts of terrorism).

- For immigration purposes, the "terrorist activity" definition includes any unlawful act involving: hijacking; sabotage; detention under threat for the purpose of coercion (of a government or an individual); violent attack on an internationally protected person; assassination; the use of biological, chemical, or nuclear weapons; or the use of explosives, firearms, or any other weapon or dangerous device with the intent to cause harm to individuals or damage to property. The attempt or conspiracy to commit these acts is also included as "terrorist activity."
- The law defines "engage in terrorist activity" broadly to include committing, inciting, preparing or planning a terrorist activity; gathering target information; soliciting funds or resources for terrorist activity or a terrorist organization; soliciting an individual to engage in terrorist activity or to join a terrorist organization; and affording material support (e.g. a safe house, transportation, communications, funds, funds transfer), false documentation or identification, weapons, or training for the commission of terrorist activity to a person who has committed terrorist activity, or to a terrorist organization.
- The Department of State and the Immigration and Naturalization Service work together with other agencies to maintain a robust database of terrorists and terrorism supporters, to prevent them from receiving visas or gaining access to the U.S.
- There are additional terrorism-related grounds for denying admission to the U.S. Terrorists are ineligible, for example, for temporary protected status, and asylum and refugee status (see the response in this report to paragraph 3(f) below). There are also provisions in the U.S. Criminal Code, and the Immigration and Nationality Act, to prosecute those who harbor or smuggle alien terrorists, or who provide them with material support (including immigration or other identity documents). In addition, foreign nationals who provide material assistance to, or solicit it for, certain designated terrorist organizations are inadmissible to the United States or may be deported if previously admitted. Thirty-nine Terrorist Exclusion List organizations were designated on December 5, 2001 for this purpose.
- As an example of relevant actions, U.S. immigration authorities have excluded from the U.S. foreign nationals based upon classified information relating to terrorist activity. Some of the cases involved attempted entry with fraudulent passports; others involved immigrants without a valid immigrant visa.

2(d): What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens?

Numerous laws address the threat of terrorists acting from U.S. territory against citizens or interests of other states. Terrorist financing and money laundering laws (see section on paragraph 1 above) are very useful in countering such situations as providing material support or resources. The provision, in the U.S., of material support to a foreign terrorist organization is a serious crime under U.S. law and allows us to take actions which also benefit the anti-terrorist efforts of our overseas partners in the fight against terrorism. Recently, the U.S. has damaged the overseas operations of Mujahadin E-Khalq, the

Provisional Irish Republican Army, Hizballah and other foreign terrorist organizations by criminally charging people in the U.S. with providing or attempting to provide material support or resources to those organizations. On December 4, 2001 we shut down a Texas-based fundraising operation whose activities benefited the terrorist activities of Hamas in the Middle East.

- It is a crime to provide, attempt, or conspire to provide within the U.S. material support or resources, or to conceal or disguise the nature, location, source or ownership of resources, knowing or intending that they are to be used in the commission or preparation of a wide variety of specified terrorist related crimes.[22] Material support or resources is very broadly defined and includes, for example, monetary instruments, financial services, lodging, training, documentation, communications, weapons, personnel, transportation, and other physical assets (except medicine or religious materials).
- It is a crime to knowingly provide or attempt or conspire to provide material support or resources to a designated foreign terrorist organization. Again, material support or resources is very broadly defined.[23] U.S. jurisdiction is extraterritorial and the statute specifically contemplates the movement of material support or resources from the U.S. to a foreign terrorist organization outside the U.S.
- Providing or collecting funds for the use of terrorists or terrorist organizations is also a violation of the law.[24] Transactions need not be entirely domestic, but rather can be, and in some cases must be, international to meet the elements of the violation.[25] (See the response to paragraph 1 in this report for details.)
- In addition to the substantial terms of incarceration and the criminal and civil fines imposed for the above violations, the code also authorizes the U.S. to seize and forfeit funds and other assets involved in violations of §§ 1956, 1957, 2339A, and 2339B and funds or assets in which terrorists or terrorist organizations have an interest.[26] The code also includes numerous crimes that may be charged against individuals who act from the U.S. against the citizens of another country or against the interests or facilities of another country, regardless of whether those citizens, facilities or interests are located within the U.S. or within that other country.[27]
- Also, the 50 states each have criminal codes that may enable them to punish people who conspire within their borders to commit serious, terrorist-related crimes beyond the borders of the U.S.

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[22] 18 U.S.C. § 2339A. Penalties for each violation can include criminal fines and incarceration of up to fifteen years.

[23] 18 U.S.C. § 2339B. Penalties for each violation can include criminal fines and incarceration of up to fifteen years.

[24] 18 U.S.C. §§ 1956 and 1957

[25] Penalties for each violation can include enhanced criminal fines and incarceration of up to twenty years. Section 1957 makes it a crime to engage in a monetary transaction in property derived from specified unlawful activity, such as 18 U.S.C. §§ 2339A and/or 2339B. Transactions under § 1957 need not be entirely domestic, but can be, and in some cases must be, international to meet the elements of the violation. Penalties for each violation can include criminal fines and incarceration of up to ten years.

[26] 18 U.S.C. §§ 981 and 982

[27] For example, 18 U.S.C. § 956 makes it a crime to conspire to kill, maim, or injure persons or damage property in a foreign country; 18 U.S.C. § 2332b makes it a crime to engage in acts of terrorism transcending national boundaries; 18 U.S.C. § 2332a(b) makes it a crime for a national of the United States to use certain weapons of mass destruction outside the United States; 18 U.S.C. § 1116 the murder or manslaughter of foreign officials, official guests, or internationally protected persons a crime; 18 U.S.C. § 1119 makes a foreign murder of a U.S. national a crime; 18 U.S.C. § 32 makes it a crime to destroy aircraft of aircraft facilities within or outside the U.S.; and finally, 49 U.S.C. §§ 46502 - 46507 make it a crime to engage in aircraft piracy or carry a weapon or explosive on an aircraft.

2(e): What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts?

Terrorist acts are among the most serious offenses under U.S. law. Violent, terrorist-related crimes generally carry substantially higher criminal penalties and can lead to imposition of the death penalty, or life imprisonment.[28]

- Earlier this year, after convicting four members of al-Qaida for the bombing of the U.S. embassies in Nairobi and Dar es Salaam, a federal jury in New York City recommended life imprisonment for all four.
- Depending on the defendant's acts, his criminal history, and his willingness to cooperate with authorities, there is a range of sentences from which the sentencing judge may select. In recent years, we have not imposed the death penalty in a federal international terrorism prosecution.
- Terrorist financing statutes carry substantial criminal fines and considerable periods of incarceration.[29] There is only one such case in which a sentence has been imposed. In that case, a U.S.-based individual was assisting immigrants (including at least one affiliated with a foreign terrorist organization) to fraudulently obtain enhanced immigration status. The defendant pled guilty and agreed to cooperate with federal authorities. This defendant received a sentence of two years of incarceration without any possibility of parole and three years of supervision.
- The money laundering statutes also carry considerable penalties.[30] U.S. Sentencing Guidelines provide for substantial enhancement of the prescribed period of incarceration in instances where terrorist activity is involved.

2(f): What procedures and mechanisms are in place to assist other states?

The U.S. provides assistance for criminal investigations or proceedings relating to terrorist acts through bilateral programs and as an active participant in multilateral programs.

- The U.S. provides training and technical assistance on money laundering and financial investigations to law enforcement, regulatory, and prosecutorial counterparts. The programs benefit anti-terrorist efforts by assisting other nations' anti-money laundering programs; assisting in creating financial intelligence units; and training financial investigators, bank regulators, and prosecutors to recognize and investigate suspicious transactions.
- The U.S. maintains mutual legal assistance treaties and agreements with over 45 countries, with more in negotiation or signed and awaiting Senate approval. They provide assistance in the investigation, prosecution, and suppression of criminal offenses, including those related to terrorism. For example, such treaties typically obligate the U.S. to provide foreign investigators and prosecutors with financial records, witness statements and testimony, and assistance in freezing and forfeiting criminally derived assets. Even in the absence of a treaty relationship, the U.S. may, under appropriate circumstances, provide a host of evidential assistance to foreign countries pursuant to our domestic law. The U.S. acts on hundreds of foreign requests for assistance in criminal matters every year.

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[28] E.g. 18 U.S.C. § § 2332a and 2332b

[29] While the terrorist financing statutes at 18 U.S.C. §§ 2339A and 2339B each authorize imposition of a period of 15 years incarceration for each violation, under the Sentencing Guidelines, a multiple count conviction could result in a sentence of considerably more time than 15 years.

[30] The maximum period of incarceration for a single violation of 18 U.S.C. § 1956 is 20 years. The maximum period of incarceration for a single violation of 18 U.S.C. § 1957 is 10 years.

- We assist in training other countries' counterterrorism task forces. Training includes major case management, terrorist crime scene management, advanced kidnapping investigations, and financial underpinnings of terrorism. Also, we make personnel available for assistance on a case-by-case basis. Pertinent information is shared on a regular basis with law enforcement entities around the world.
- The U.S. also maintains overseas International Law Enforcement Academies. Their courses include segments on financial crime and money laundering.

2(g): How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc?

- With few exceptions, all non-U.S. citizens entering the U.S. must have a valid visa or be exempted by holding a passport from one of 29 countries approved for visa waiver. Every visa applicant is subject to a name check through a database containing nearly six million records. At entry, everyone is subject to inspection. Inspectors are well trained to determine counterfeit and altered documents, and to detect evasive or untruthful responses. Every entering visitor is subject to checks in databases.
- A new, tamper-resistant visa will shortly replace the current visa. We are also working to improve the exchange of data among our agencies to ensure that anyone with a history of involvement with terrorism is quickly identified.
- Because of long common borders, movements to the U.S. from Canada and Mexico are difficult to control. Although cooperation with those governments is good, we are engaged in renewed discussions with both governments to improve border controls.
- American citizens must have a U.S. passport to enter the U.S. unless they have been traveling in North, Central or South America, in which case they may use other documents to verify their citizenship and identity. As we have no national identity card, the INS may rely on several other documents to establish identity and citizenship.
- Applicants for U.S. passports are required to prove their citizenship and identity. Those who fail to meet strict evidentiary requirements are not issued a passport. In addition, a vigorous fraud prevention program trains staff to identify attempts to use valid or falsified documents to obtain a passport in another identity. We can track how many passports one individual has received, and a system is being deployed to better track lost and stolen passports. The U.S. passport itself has recently been upgraded to prevent photographic substitution, the major form of alteration, and to make counterfeiting of the document very difficult. Visas are not issued to known terrorists.
- The Immigration and Naturalization Service also maintains a very proficient Forensic Document Laboratory (FDL), which helps other immigration services to identify fraudulent documents and trends. It routinely prepares "Document Alerts" on new, revised, counterfeit, and altered U.S. and foreign documents. Such alerts have been the basis for both criminal and administrative actions taken against individuals presenting counterfeit or altered documents. The FDL also works very actively to ensure that security marks and checks are embedded in travel and immigration documents, to minimize counterfeiting or alteration.
- The U.S. Border Patrol detects and prevents the smuggling and illegal entry of foreign nationals, primarily between the Ports of Entry. Agents perform their duties along, and in the vicinity of, the 8,000 land and 2,000 coastal miles of U.S. boundaries. In all its enforcement activities, the Border Patrol coordinates with counterterrorism efforts.
- In aviation security, the Federal Aviation Administration has issued a series of security advisories to U.S. and foreign air carriers to enhance passenger and baggage screening requirements, to establish

stricter controls on general aviation and tighten the rules on belly cargo in passenger planes. These measures, along with hardening cockpit doors, have upgraded the security of flights to, from and within the U.S.

- Threat assessments by U.S. agencies are continuous and the FAA passes information about terrorists or suspected *mala fide* passengers on a real time basis to airlines. Passengers are subject to multiple checks of their identity and bona fides from the time they apply for a visa to the point that they enter the U.S. If derogatory information is developed after the visa is issued, there are points at which the suspect can be apprehended and turned over to law enforcement services. In addition, the U.S. requires the advance transmission of passenger (and crew) manifests from all U.S.-bound flights. To help ensure that cockpit crews operating to the U.S. are not compromised by terrorist elements, the FAA has instituted additional requirements for background checks on pilots, co-pilots, and flight engineers.
- U.S. aviation security experts participate fully in the work of the International Civil Aviation Organization (ICAO) to strengthen the security annex (#17) to the Chicago Convention. Many recommended practices in the current annex are expected to be elevated to mandatory standards.
- The U.S. is an active participant in the ICAO Working Group on Machine-Readable Travel Documents, which has been working for more than a decade to establish international standards for passports, other travel documents, visas, and identity cards. Current U.S. travel documents and visas conform to the standards developed by this group and adopted by ICAO. Many countries have also improved their documents so they are more reliable.

UNSCR 1373 Operative Paragraph 3

3(a): What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

The U.S. is making extensive efforts to accelerate the exchange of operational information in these areas with other states. Through a series of bilateral meetings and multinational conferences since September 11, senior officials have discussed the need for faster sharing of information.

- Multilaterally we have particularly worked with the Financial Action Task Force, the Egmont and Lyon Groups, the Group of 7 and Group of 20, the IMF and other international financial institutions and the Group of Eight (G-8) counter terrorism dialogue (including the Counterterrorism Experts Group).
- We have also worked with regional organizations such as the Organization of American States, the Organization of African Unity, the Association of South East Asian Nations, the European Union, the Council of Europe the Asia Pacific Economic Cooperation forum, the Manila Framework Group and the Organization for Security and Cooperation in Europe.

Exchanging Operational Information

- Since September 11, contacts between U.S. law enforcement officials and prosecutors and foreign officials have intensified. Legal Attaches overseas and foreign police authorities regularly share criminal intelligence. Operational information is also exchanged between U.S. and foreign prosecutors. Such exchanges are facilitated through designated "central authorities" under each of the U.S. Mutual Legal Assistance Treaties (MLATs). U.S. authorities and international organizations, such as INTERPOL, share operational information on the detection of fraudulent documents and alerts on terrorist suspects.

Exchanging Information on Arms, Explosives and Weapons of Mass Destruction

- The U.S. works with other nations to exchange operational information on terrorists, arms trafficking, explosives or sensitive materials, and weapons of mass destruction threats.
- We participate in multilateral export control regimes and encourage information sharing on weapons and associated technology that may be diverted to terrorists.
- Wassenaar Arrangement members recently agreed that preventing terrorist access to conventional weapons and associated dual-use items is an important new focus. We continue to take the lead in stressing the value of data exchanges on small arms/light weapons between OSCE and Wassenaar Arrangement countries.
- The U.S. National Tracing Center assists other nations to trace U.S.-origin weapons used in terrorist or criminal activities. Our assistance program for weapons stockpile management and security and destruction of surplus weapons is further sharing of information, focusing on countries with a high risk of illicit arms transfers, to keep these weapons from terrorists.
- The U.S. also exchanges information through bilateral, regional and multilateral initiatives to eliminate opportunities for terrorists to acquire weapons of mass destruction (WMD). Over 30 countries have cooperated with us to make counterterrorism an important new focus of the Australia Group (chemical/biological nonproliferation regime).
- The work of other regimes -- the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Zangger Committee -- also is relevant to keeping sensitive technologies out of terrorists' hands.

- The U.S. works with the International Atomic Energy Agency and other organizations to increase the exchange of information aimed at strengthening controls over WMD-related materials and technologies. This has included export control dialogues, such as the Central Asian State Export Control and Border Security Program.
- The G-8 Nonproliferation Experts Group (NPEG) develops action plans to strengthen international instruments to prevent WMD proliferation, protect sensitive materials and facilities, encourage wider adherence to the principles of international export control arrangements, reinforce and better coordinate assistance programs, and enhance information exchange on illicit trafficking of sensitive materials, technology and expertise.
- The U.S. is also a key participant in the G-7 Nuclear Safety Working Group (NSWG), which works to strengthen controls on radiological sources.

Technology Transfer and Skills Training

- The U.S. uses other programs to enhance exchanges of information among law enforcement agencies. These include the Terrorist Interdiction Program (TIP), which provides information and training to identify terrorist suspects seeking to cross borders, and the Antiterrorism Assistance program, which provides assistance for border patrol and airport security. The U.S. is also helping INTERPOL to modernize equipment for faster transmission of fingerprints and other graphics to TIP participants.

Customs Information and Enforcement

- Under U.S. law, air carriers must provide advance passenger information to U.S. Customs by electronic transmission and prior to arrival in the United States. With this information, law enforcement agencies should be able to screen passengers to obtain information about the movement of suspected terrorists while reducing delays for other passengers entering the United States.
- U.S Customs maintains mutual assistance agreements with other countries' customs agencies, which allow the sharing of information during an investigation on the movements of people and cargo across borders.

3(b): What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?

The U.S. has stepped up information exchanges through law enforcement and intelligence channels to prevent terrorist acts.

- We have mutual legal assistance treaties and agreements (see section 2 above for details). These provide for the exchange of information and evidence in investigating and prosecuting criminal offenses, and for the suppression or prevention of such offenses. Law enforcement cooperation to prevent terrorist acts has been enhanced by the broadened use of the U.S. Joint Terrorism Task Force domestically and the Legal Attaché Program internationally.
- Our intelligence and national security organizations have active programs to detect, preempt, disrupt, and defeat international terrorism. Many nations cooperate with us in fighting terrorism through information exchanges.

3(c): What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?

- We have in place an extensive series of bilateral and multilateral agreements, such as MLATs (see above) for cooperation in preventing terrorist attacks and investigating and prosecuting perpetrators.
- In addition, the U.S. is party to ten of the twelve international conventions and protocols relating to terrorism, and expects to ratify the two most recent conventions (Terrorist Bombings and Terrorism Financing) in the near future. U.S. law enforcement authorities continue to cooperate with their counterparts in various countries around the world on the prevention of terrorist attacks and the investigation and prosecution of those who commit such acts, pursuant to the relevant agreements and other arrangements.
- The U.S. has prosecuted and convicted domestic and international terrorists in dozens of cases. Specifically the U.S. has prosecuted cases under U.S. laws implementing the Montreal Convention (Aircraft Sabotage),[31] the Hague Convention (Hijacking),[32] the Hostages Convention,[33] and the Internationally Protected Persons Convention.[34]

3(d): What are your government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

The U.S. is party to ten of the twelve relevant international conventions and protocols relating to terrorism, and expects to ratify the two most recent conventions (Terrorist Bombings and Terrorism Financing) in the near future.

3(e): Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph?

The U.S. is a party to ten of the twelve conventions and protocols relating to terrorism. Legislation has been enacted to fully implement:

- The Convention on Offences and Certain Other Acts Committed On Board Aircraft, 1963 ("Tokyo Convention")[35]

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[31] U.S. v. Yousef, 1999 WL 714103 (S.D.N.Y. 1999) (defendant convicted of conspiring to bomb U.S. passenger airlines in violation of 18 U.S.C. § 32, the implementing statute of the Montreal Convention) [For list of charges, see U.S. v. Yousef, 925 F. Supp. 1063 (S.D.N.Y. 1996)].
Cf., U.S. v. Rashed, 234 F.3d 1280 (D.C. Cir. 2000)

[32] U.S. v. Rezaq, 134 F.3d 1121 (D.C. Cir. 1998) (affirming defendant's conviction for aircraft piracy in violation of 49 U.S.C. § 46501, the implementing statute of the Hague Convention).
Cf., U.S. v. Mena, 933 F.2d 19 (1st Cir. 1991); U.S. v. Pablo-Lugones, 725 F.2d 624 (11th Cir. 1984)

[33] U.S. v. Lue, 134 F.3d 79 (2d Cir. 1998) (affirming hostage-taking conviction/plea under 18 U.S.C. § 1203, the implementing legislation for the Hostages Convention). Cf., U.S. v. Lin, 101 F.3d 760 (D.C. Cir. 1996); U.S. v. Lopez-Flores, 63 F.3d 1468 (9th Cir. 1995); U.S. v. Carrion-Caliz, 944 F.2d 220 (5th Cir. 1991)

[34] U.S. v. Omar Ahmad Ali Abdel Rahman, et al., S.D.N.Y. (prosecution against ten defendants for conspiracy to bomb the U.N. and other public buildings and facilities and military installations, as well as conspiracy to murder Egyptian President Hosni Mubarak, the latter offense in violation of 18 U.S.C. §§ 1116 and 1117, the implementing statutes for the Internationally Protected Persons Convention; all defendants convicted on all counts; unreported trial court decision; post-trial decision, affirmed in part, remanded in part, 189 F.3d 88 (2d Cir. 1999), cert. denied, 528 U.S. 1094 (2000). Cf., U.S. v. Usama Bin Laden, et al., S.D.N.Y, no reported post-trial decision or appeal; U.S. v. Shirosaki, unreported case, D.D.C. 1998, affirmed without opinion, 194 F.3d 175 (D.C. Cir. 1999), cert. denied, 528 U.S. 1081 (2000)

[35] 49 U.S.C. §§ 46501, 06

- The Convention for the Suppression of the Unlawful Seizure of Aircraft, 1970 ("Hague Convention")[36]
- The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971 ("Montreal Convention")[37]
- The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, 1973[38]
- The International Convention Against the Taking of Hostages, 1979 ("Hostages Convention")[39]
- The Convention on the Physical Protection of Nuclear Material, 1980[40]
- The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation[41]
- The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988[42]
- The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988[43]
- The Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991[44]

- In addition, the U.S. has signed and expects to ratify in the near future the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. Implementing legislation for both has been submitted to the Congress.
- The U.S. has implemented Security Council resolutions 1269 and 1368 by working to become a party to all twelve of the conventions and protocols relating to terrorism, by fully implementing those agreements to which it is a party, and by establishing and implementing the measures discussed elsewhere in this submission.

3(f): What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status?

- The U.S. has several measures to ensure that asylum seekers have not been involved in terrorist activity before it grants them refugee status. A directive issued by President Bush on October 29, 2001 creates a Foreign Terrorist Tracking Task Force strengthening existing procedures. The Task Force will coordinate U.S. programs to: (1) deny entry of foreign nationals associated with, suspected of being engaged in or supporting terrorist activity; and (2) locate, detain, prosecute, or deport such foreign nationals in the U.S.
- The U.S. grants refugee status in two different forms: a) individuals applying from abroad may be admitted as refugees; b) refugees in the U.S. may be granted asylum. To be eligible for either status, an applicant must establish that he or she is unable or unwilling to return home because of past persecution or well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

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[36] 49 U.S.C. § 46501-02
[37] 18 U.S.C. § 31-32, 49 U.S.C. § 46501
[38] 18 U.S.C. §§ 112, 878, 1116 & 1201(e)
[39] 18 U.S.C. § 1203
[40] 18 U.S.C. § 831
[41] 18 U.S.C. § 37
[42] 18 U.S.C. § 2280
[43] 18 U.S.C. § 2281
[44] 18 U.S.C. §§ 841(o)-(p), 842(l)-(o), 844 (a)(1) & 845(c), 19 U.S.C. § 1595a, 18 U.S.C. § 842(m)-(o)

- The U.S. is a party to the 1967 Protocol Relating to the Status of Refugees, through which it undertook obligations found in the 1951 Convention Relating to the Status of Refugees. U.S. law contains several provisions that, together, implement the grounds for exclusion of refugee status found in the 1951 Convention including denial of refugee status to those involved in terrorist activity.
- Under U.S. law, those who apply for refugee status from outside the country are generally subject to the same grounds of inadmissibility as other applicants and cannot be granted refugee status if those grounds apply. Under the law, foreign nationals who engage in terrorist activity are inadmissible (see Section 2(c) above). This provision is enforced in the overseas refugee program through a screening process that relies on applicant interviews by U.S. immigration officials, checks of appropriate information databases, and security referral procedures to review and investigate cases. Experts provide consultative guidance on questionnaires, biometrics and other security mechanisms to immigration officials who adjudicate refugee protection claims.
- Slightly different safeguards apply in the domestic program. The law excludes from asylum any person who has engaged or may engage in terrorist activity, who incites terrorist activity, or who is a knowing member of a terrorist organization. Representatives of a terrorist organization, or of certain groups whose endorsement of terrorism undermines U.S. counterterrorism efforts, are also barred from asylum. An individual may also be excluded from asylum if there are good reasons for regarding the individual as a danger to the security of the U.S., or for believing that the individual has committed a serious non-political crime. U.S. law interpreting the serious non-political crime provisions make clear that, even if the crime involves political motivations, it is considered non-political if it is grossly out of proportion to the political objective, or if it involves acts of an atrocious nature. These provisions are enforced by screening procedures relying on fingerprint and identity checks and on databases that have information on criminal and terrorist activity.

3(g): What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists.

- Once refugee or asylum status has been granted, U.S. law prohibits the abuse of such status by terrorists. The Foreign Terrorist Tracking Task Force created by Presidential Directive in October 2001 (see 3(f) above) coordinates programs to locate, detain, prosecute, or deport foreign nationals in the U.S. who are suspected of being engaged in or supporting terrorist activity.
- Persons admitted from abroad as refugees are subject to removal from the U.S. if they have engaged, or are engaged, in any terrorist activity, notwithstanding their refugee status. Also, in every case, a refugee is required to submit to inspection by INS at the end of one year. An immigration official examines the refugee to determine whether any grounds of inadmissibility apply and may deny the refugee permanent resident status on terrorism grounds.
- Similar safeguards ensure terrorists do not abuse asylum. Asylum can be terminated if it is determined that the asylee is subject to any of the bars to asylum, which include specific provisions excluding terrorists, as well as provisions excluding those who have committed serious nonpolitical crimes and those who can reasonability be regarded as a danger to the security of the U.S.
- Many modern U.S. extradition treaties provide that the political offense exception to extradition is not available for certain criminal offenses associated with terrorism, e.g. murder or other willful crimes against a head of state or family member and terrorist offenses specified in multilateral international agreements. These treaty provisions are U.S. law and have been applied in a number of cases.

- The U.S. also has signed and expects to ratify in the near future two multilateral terrorism conventions, those relating to Terrorist Bombings and Terrorist Financing, which have the effect of limiting the political offense exception to extradition.

United Nations S/2001/1221

Security Council

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Letter dated 19 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Kuwait, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman of the Counter-Terrorism Committee

01-70975 (E) 271201 271201

Annex

Letter dated 19 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Arabic]

On instructions from my Government I have the honour to transmit to you herewith the report of the Government of Kuwait to the Counter-Terrorism Committee, submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001).

(*Signed*) Mansour Ayyad Sh. A. **Al-Otaibi**
Chargé d'affaires a.i.

Enclosure

Report submitted to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

Kuwait is fully committed to cooperation with the United Nations, its Member States and the Security Council Committee established pursuant to resolution 1373 (2001) on combating international terrorism. The State of Kuwait reaffirms its support for international efforts to implement Security Council resolution 1373 (2001) and all other relevant legal instruments on counter-terrorism.

Other comments relating to specific questions raised by the Counter-Terrorism Committee:

Operative paragraph 1

Subparagraph (a): What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?

The measures adopted in the State of Kuwait to prevent and suppress the financing of terrorist acts are as follows:

Kuwait is bound by international treaties and conventions on international terrorism and has concluded bilateral agreements relating to security.

The Council of Ministers recently issued its decision No. 867, adopted at its meeting 2001/36, held on 7 October 2001, which requires the control of the work of charitable committees with respect to the projects which they have decided to carry out abroad. Accordingly, a supreme ministerial committee for the control of charitable work at home and abroad has been formed, in addition to the creation of a subcommittee chaired by the Ministry of Social Affairs and Labour to regulate the work of charitable organizations and committees.

Subparagraph (b): What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

The Kuwaiti penal code considers as criminal offences acts and activities likely to cause terror or fear and sabotage committed against the regular authorities of the State.

Subparagraph (c): What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

The procedures followed in this regard consist in the freezing, without delay, of the property and any financial assets or economic resources of persons who commit, attempt to commit or participate in or facilitate the commission of terrorist acts, of entities directly or indirectly owned or controlled by such persons and of persons or entities that work for the account of such persons or entities or act on their instructions, including assets derived from property owned by such terrorists and persons and entities connected with them and assets produced by such property.

Regarding legislation, in addition to our response to the question relating to operative paragraph 1, subparagraph (c), the Government of Kuwait has prepared a legislative bill to combat money-laundering operations, which is about to be issued by the National Council. The bill establishes the cases which constitute the crime of money-laundering, the obligation of financial institutions and Government offices in that regard and the penalties applicable.

Subparagraph (d): What measures exist to prohibit the activities listed in this subparagraph?

The measures adopted in Kuwait to prohibit terrorist activities are as follows:

The Central Bank of Kuwait imposes, either directly or indirectly, a prohibition on property, financial assets, economic resources or financial or other services available to nationals of States or to persons or entities and capable of being used by them to finance persons who commit, attempt to commit or participate in or facilitate the commission of terrorist acts, entities directly or indirectly owned or controlled by such persons or persons or entities that act on behalf or on the instructions of such persons.

In that regard, the Central Bank has issued a number of circulars on this subject, such as that dated December 1999 concerning the freezing of assets and other financial resources directly or indirectly connected with the Taliban movement, adopted pursuant to Security Council resolution 1267 (1999).

In addition, in 1993 the Central Bank issued instructions to all units subordinate to it, namely banks, investment companies and money-changing companies, on combating the laundering of money derived from major crimes. Those instructions were updated in 1997 and 1998. In addition, the Bank prepared instructions to cover all banking and financial aspects included in the 40 recommendations issued by Financial Action Task Force on Money-Laundering.

Operative paragraph 2

Subparagraph (a): What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

The Kuwaiti penal code, as amended, considers as criminal offences a number of acts and activities that can be classified as terrorist acts, as follows:

Article	*Text of the article*	*Penalty*
170	The crime of hijacking ships, aircraft or any other means of maritime or air transport for the purpose of causing harm to persons or things	Five to 15 years' imprisonment
171	The crime of threatening the lives of persons or things transported on public roads with destruction thereof or with the giving of hijacking instructions or exhortations	Five to 15 years' imprisonment
249/250	The crime of destroying public facilities and public resources	Imprisonment
251	The crime of sinking or damaging ships	Seven to 10 years' imprisonment
252	Acts of piracy at sea, consisting in the attacking of vessels on the high seas for the purpose of taking possession thereof or of goods carried thereon	Imprisonment
4	The crime of assembling an army without the permission of the Government	Not less than 3 years' imprisonment
29	The crime of incitement to overthrow the regime by force	More than 10 years' imprisonment
30	The crime of participating in banned organizations	Ten to 15 years' imprisonment
34	The crime of participating in assembly for the purpose of committing crime or assembly involving a breach of public order	One to 5 years' imprisonment
35	The crime of using explosive substances to kill persons, to create panic or to cause destruction	Imprisonment
Law No. 1991/13	Prohibition against the unauthorized possession of weapons and ammunition of any type or size	Five to 7 years' imprisonment, with doubling of the penalty in case the offence is repeated
Law No. 1994/6	Crimes relating to the safety of aircraft and aviation	

Subparagraph (b): What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

The steps taken are as follows:

Intensification of monitoring and investigation of elements suspected of involvement in terrorist activities.

Commitment under a number of international, Arab or bilateral agreements (on security matters) relating to the fight against terrorism.

Available early warning mechanisms to allow exchange of information with other States include the rapid exchange of communications with the States with which the above-mentioned agreements have been concluded, with hotlines being made available, partly under previously concluded security agreements that include relevant provisions.

Subparagraph (c): What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph?

First of all, we wish to commend the Kuwaiti constitution for the provision, contained in its article 28, that no Kuwaiti shall be banished from or prevented from returning to Kuwait.

Kuwaiti residence law 1959/17 provides that no foreigner shall enter, leave or reside in the country without a valid passport and visa.

The same law provides, in its section on expulsion of foreigners from the country, that such expulsion shall be permissible in the event that a judicial decision calling for such expulsion has been handed down or for reasons of public interest, security or morality.

In addition, Kuwaiti criminal law No. 1960/16 provides that the penalty of expulsion from Kuwait of a foreigner proven guilty of committing unlawful acts may be applied after he has completed the prison sentence.

Subparagraph (d): What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

The Kuwaiti penal code, in article 4 of law No. 1970/31, as amended, prohibits any hostile act against a foreign State that might expose the State of Kuwait to the risk of war or the severance of diplomatic relations and provides for a penalty of not less than three years' imprisonment.

Subparagraph (e): What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

For the response to this question, see our responses under 2 (a) and 2 (d).

Subparagraph (f): What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

Procedures and mechanisms in place to assist other States involve the provision of such assistance through agreements concluded with them which include clauses relating to the provision of assistance or, at the request of such other State, direct assistance to the extent permitted under national laws.

In addition, other States are provided with the greatest possible assistance in connection with investigations or criminal procedures relating to the financing or supporting of terrorist acts and such assistance is exchanged if so requested.

Subparagraph (g): How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery, etc?

Passport law No. 1962/11 establishes the criteria for the obtainment of official passports by Kuwaitis and the entry and exit of persons, both Kuwaiti and foreign, into and from the country, as well as the penalties for forgery or falsification of those important documents.

Regarding operations to prevent the movement of terrorists across the borders and the related controls, the competent authorities in the State of Kuwait perform their duties to prevent illegal entry into and exit from the country, including by suspected persons and those sought by the judicial authorities, and to place their names on record at points of entry and exit by sea, land and air.

Procedures for the issue of identity papers and travel documents and the prevention of their forgery and falsification involve the imposition of controls, especially for travel and identity documents. In addition, every passport has its own number which indicates its holder and all information pertaining to its bearer is systematically entered and stored in computers in the Ministry. Furthermore, such documents are printed using a secure, state-of-the-art process so as to prevent their being forged, and special forgery-detecting equipment has been provided.

Operative paragraph 3

Subparagraph (a): What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

The steps taken — with regard to security — in this area involve the exchange of information among the competent authorities in the country concerning the entry and exit of certain suspected persons who are a danger to the country, while maintaining the utmost secrecy, until they are apprehended.

The security authorities in the State of Kuwait also make hotlines available to the competent security bodies with a view to communications and the exchange of information in this area, in addition to exchanging visits and expertise with delegations of other countries.

This cooperation takes place in accordance with the legal and judicial cooperation treaties concluded between the State of Kuwait and other States which provide therefor. In cases where no legal and judicial cooperation treaties exist between Kuwait and any other country, the principle of reciprocity must be applied.

Subparagraph (b): What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

In addition to what has been stated in the response relating to operative paragraph 3, subparagraph (a), Kuwait responds to all inquiries concerning terrorism and counter-terrorist action addressed to it by international bodies and organizations through the competent authorities in the State of Kuwait.

The Central Bank of Kuwait engages in information exchange in accordance with international and local law and cooperation in the administrative and judicial fields with a view to the prevention of terrorist acts.

Subparagraph (c): What steps have been taken to cooperate in the areas indicated in this subparagraph?

Kuwait has concluded with a number of States bilateral agreements containing clauses relating to counter-terrorism and is currently studying the possibility of entering into bilateral agreements with other States. Kuwait also signed the Arab Anti-Terrorism Treaty on 22 April 1998.

Subparagraph (d): What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

We should like to point out that the State of Kuwait is currently completing the procedures for accession to the conventions in question, namely five international conventions out of an original 12, and specifically:

1. Convention on the Physical Protection of Nuclear Materials (1979);
2. International Convention for the Suppression of Terrorist Bombings (1998);
3. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988);
4. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988);
5. International Convention for the Suppression of the Financing of Terrorism (1999).

Subparagraph (e): Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

In addition to the instruments mentioned in the above remarks relating to operative paragraph 3, subparagraph (d), Kuwait has acceded to seven conventions out of an original 12 mentioned above, namely:

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (accession pursuant to decree-law 1988/72);

2. International Convention against the Taking of Hostages (accession pursuant to decree-law 1988/73);

3. Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963) (accession pursuant to decree-law 1979/64);

4. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, 1988) (accession pursuant to decree-law 1988/71);

5. Convention on the Marking of Plastic Explosives for the Purpose of Detection;

6. Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970) (accession pursuant to decree-law 1979/19);

7. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971) (accession pursuant to decree-law 1979/64).

Subparagraph (f): What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.

We are prepared to answer this question once the necessary relevant data are complete.

Subparagraph (g): What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of suspected terrorists. Please supply examples of any relevant cases.

For the reply to this question, refer to our response under operative paragraph 3, subparagraph (e).

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Question of Cyprus

Security Council
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Letter dated 19 December 2001 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

Upon instructions from my Government and with reference to a letter from the Permanent Representative of Turkey (A/56/451-S/2001/953) dated 9 October 2001, I have the honour to enclose herewith the text of a further opinion, dated 17 November 2001, prepared by three prominent international jurists and professors of international law, James Crawford, Whewell Professor of International Law, University of Cambridge, Gerhard Hafner, Professor of International Law, University of Vienna, and Alain Pellet, Professor of International Law, University of Paris-X, on the eligibility of the Republic of Cyprus to become a member of the European Union (see annex).

Their first opinion, dated 24 September 1997, was circulated as a document of the General Assembly and of the Security Council (A/52/481-S/1997/805), dated 17 October 1997.

I should be grateful if the text of the present letter and its annex would be circulated as a document of the General Assembly, under agenda item 62, and of the Security Council.

(*Signed*) Sotirios **Zackheos**
Ambassador, Permanent Representative

01-70766 (E) 261201

Annex to the letter dated 19 December 2001 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

The Eligibility of the Republic of Cyprus for EU Membership

Summary

1. In an Opinion of 24 September 1997 which was circulated as a Security Council and General Assembly document,[1] the three undersigned advised that Cyprus was eligible, as a matter of international law, to become a member of the European Union, and that its becoming a member would not violate any existing treaty obligation of Cyprus.

2. In particular we advised that:

- Article 1 paragraph 2 of the Treaty of Guarantee does not prohibit Cyprus from becoming a member of a regional economic organisation such as the European Union. Membership of the EU would not constitute participation "in any political or economic union with any State whatsoever" within the meaning of Article 1 paragraph 2.
- Article 50 of the Constitution of 1960 (which requires participation by the Vice-President in treaty-making) could not subsequently be invoked by Cyprus as a basis for invalidating its consent to be bound by the EU treaties.
- Likewise, Article 170 of the Constitution (which requires most-favoured-nation treatment for Turkey in respect of certain treaties of Cyprus) does not constitute a barrier to Cyprus' entry, for a number of reasons. Perhaps the most important of these is that EC membership is not regarded as triggering general most-favoured-nation obligations, under the GATT/WTO or otherwise. Turkey as a GATT/WTO member and applicant for EU membership is well aware of this practice. Thus Article 170 would not require Cyprus to extend any additional benefits of EU membership to Turkey.

This advice conforms with what is now the generally accepted position. The European Union itself has acted on the same basis, and accession negotiations have been in progress for some time.

3. By a letter of 5 October 2001, the Permanent Representative of Turkey to the United Nations forwarded a Further Opinion by Professor Maurice Mendelson QC, dated 12 September 2001.[2] The reasons given by Professor Mendelson for adhering to his earlier view that Cyprus's admission to the EU would be "illegal" do not, however, involve any new arguments supporting that conclusion. We set out below the reasons for maintaining — as the EU itself maintains — that there is no legal impediment to the admission of Cyprus.

The Treaty of Guarantee

4. By Article I (2) of the Treaty of Guarantee, Cyprus undertook "not to participate, in whole or in part, in any political or economic union with any State whatever or partition of the Island". By Article II (2), Greece, Turkey and the United Kingdom agreed "to prohibit, so far as concerns them, any activity aimed at promoting, directly or indirectly, either union

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1 J Crawford, A Pellet & G Hafner, "Republic of Cyprus: Eligibility for EU Membership" (A/52/481, S/1997/805, 17 October 1997).

2 Circulated as A/56/451-S/2001/953. An earlier opinion of 6 June 1997, and a supplementary note of 21 July 1997, are annexed.

of Cyprus with any other State or partition of the Island". The question is whether the accession of Cyprus to the EU would involve "union of Cyprus with any other State".

5. In our earlier opinion, we concluded that Articles I (2) and II (2) are irrelevant to Cyprus' EU eligibility, for the following reasons:

(a) On their literal interpretation, these Articles are not concerned with membership in regional economic associations but union with another State ("with any State whatever"). The term "State" was deliberately used in the singular.

(b) The purpose of these Articles was to prevent the union of Cyprus, or of any part of Cyprus, with Greece or Turkey, as well as the partition of the Island. It was not to prevent Cyprus entering international organizations, including regional economic unions such as the European Coal and Steel Community (ECSC), the European Free Trade Area (EFTA) or, now, the EU.

(c) This is confirmed by the *travaux* of the Treaty of Guarantee. As the Turkish delegate at the London Joint Committee assured the other negotiators, by Article I (2)...

> "it was certainly not intended that Cyprus should be precluded from membership of the [European] Free Trade Area or multilateral organizations. What was meant was that Cyprus should not be politically united with Greece or Turkey, or even economically in the narrow sense of customs union; but that could not really be said in a Treaty."[3]

The use of the singular term "any other State" was clearly deliberate. A contrast was intended to be drawn between multilateral arrangements, including economic organizations and free trade areas, on the one hand, and political and/or economic unions with a single State (in fact, Greece or Turkey), on the other hand.

(d) This interpretation is further confirmed by the terms of the Constitution of 1960, which is expressly referred to in the Treaty of Guarantee. Article 185 (2) of the Constitution also uses the singular "any other State" in the prohibition on "integral or partial union". Articles 50 and 169 refer to and permit Cyprus to become a party to international organizations and economic cooperation agreements. There is a clear contrast between multilateral international organizations and economic cooperation with a number of States, on the one hand, and the union of Cyprus with any particular State, on the other hand.

(e) In any event, arguments based on Articles I and II of the Treaty of Guarantee misconceive the character of the European Union. The EU is not a State. Membership of the EU does not entail member States uniting with each other on any individual basis. Under the EU, France is not united with Germany, nor Britain with Sweden. Cyprus as a member of the EU would not be united with any other particular State. Yet it is only Cyprus' union with any other particular State which Articles I and II of the Treaty of Guarantee prohibit. In this context it should be stressed that according to Article 2 TEU, the principle of subsidiarity limits the competences of the EU so that one cannot speak of a "common law-making process" with an all-

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3 London Committee on Cyprus, Corrected Minutes of the 26th Meeting of the Committee of Deputies, LC (MD), 19 October 1959, p 6.

encompassing scope.[4] Furthermore the EU has to respect the national identities of its Member States according to Article 6 (3) TEU.

(f) Our interpretation of Articles I and II is supported by the subsequent practice of the parties to the Treaty of Guarantee. Thus neither the United Kingdom nor Turkey objected on that ground when Cyprus entered into a customs union with the EEC in 1972.[5] Turkey's concerns at possible discrimination against Turkish Cypriots were addressed by Article 5 of the Association Agreement of 19 December 1972.[6] The situation of Cyprus under the Association Agreement and its Protocols was subsequently addressed by the European Court of Justice in 1994, in terms which cast no doubt upon the legality of the situation so far as the EU is concerned.[7]

(g) This interpretation is also supported at the international level. The European Commission has accepted that Cyprus is eligible for membership,[8] and the Member States have so agreed, most recently in the agreement for EU enlargement reached in conjunction with the Treaty of Nice.[9] The Security Council has affirmed that a Cyprus settlement "must exclude union in whole or in part with any other country or any form of partition or secession" and has welcomed "the decision of the European Union concerning the opening of accession negotiations with Cyprus" as "an important development that should facilitate an overall settlement".[10] Obviously the Security Council does not regard the accession negotiations as a breach of an essential condition of a Cyprus settlement.

(h) In addition we noted that Austria joined the EU in 1995, despite the prohibition in Article 4 of the Austrian State Treaty of 1955 against its entering into "political or economic union with Germany in any form whatever". Neither the European Commission nor any existing Member State argued that Article 4 of the Austrian State Treaty prohibited Austrian membership of the EU. Nor did the Soviet Union (or the

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4 Mendelson, Further Opinion, para. 24.

5 *OJEC* No L 133/1 (1973). There have been 6 amendments to the Agreement, most recently in 1987 (*OJEC* No L 393/13 (1987)) and 1995 (*OJEC* No L 278 (1995)). The 1987 Protocol initiated the second stage of association, with a view to a complete customs union within 15 years (Art. 31).

6 The Turkish objections in 1972 are summarized in *Europe* No 986, 16 February 1972. As Professor Mendelson recognises, Turkey did not rely on Article I of the Treaty of Guarantee. He argues that Turkey's failure to object should be overlooked because the 1972 Agreement was "a relatively modest affair": Further Opinion, para. 28. But this cannot be said as to the 1987 Protocol; and anyway, even in 1972, there was a customs union which, on his view, was prohibited by the Treaty of Guarantee.

7 *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087, 3131, 3133-4; 100 ILR 258, 297-9.

8 Commission of the European Communities, *The challenge of enlargement. Commission opinion on the application by the Republic of Cyprus for membership* (*OJEC* Supp 5/93) 7-8.

9 See Protocol on the Enlargement of the European Union; Declaration on the enlargement of the European Union, annexed to the Treaty of Nice, 26 February 2001, *OJEC*, No C 80/1 (2001). See also Helsinki European Council, Presidency Conclusions, Helsinki, 10-11 December 1999, para. 9 (b); Commission of the European Communities, 2001 Regular Report on Cyprus Progress towards Accession, Doc SEC (2001) 1745.

10 See Security Council Res. 1117 (1997), 27 June 1997. For later resolutions on Cyprus, see e.g. SC Resns. 1354 (2001), 15 June 2001, 1331 (2000), 13 December 2000, 1251 (1999), 29 June 1999.

Russian Federation, after the break-up of the USSR); its concern was with the neutrality of Austria.

6. Thus the literal terms of Articles I and II of the Treaty of Guarantee, interpreted in the light of their object and purpose, support our conclusion. So too does the negotiating history of the Treaty, the subsequent practice of the parties, and the unanimous opinion of the EU Members as well as the European Commission. Among States which are not members of the EU, only Turkey seems to take the opposite position. Certainly the Security Council does not, despite its continuing preoccupation with the situation in Cyprus and with the preconditions for a settlement of the Cyprus question which "must exclude union in whole or in part with any other country or any form of partition or secession".[11]

7. In opposition to this virtually unanimous view of Cyprus' eligibility for membership, notwithstanding the Treaty of Guarantee, Professor Mendelson makes a number of arguments in his most recent opinion. These include the following:

(a) Applying the principle of literal interpretation, he argues that because the EU is "an economic union, as well as (increasingly) a form of political union", therefore membership of the EU is prohibited.[12] But literal interpretation requires one to interpret all the words, not just some of them, and to interpret all the words together in their context. The question is not whether the EU is an economic union, but whether a State which joins the EU is entering into an economic union "with another State" within the meaning of the Treaty of Guarantee.

(b) He argues that "in legal drafting in English" (and in French) the singular includes the plural, so that Article I should be read as prohibiting economic union "with any State or States".[13] But not even under the Acts Interpretation Act 1889 (UK) is there a *rule* that the singular includes the plural; it depends on the context. And of course we are dealing with a treaty, albeit one drafted in the English language. There was a reason for the emphasis on the singular: the concern was political or economic union of Cyprus with a single State (i.e., Greece) or of part of Cyprus with another State (Turkey). It was not a concern with such things as the European Free Trade Agreement.

(c) He argues that the veto provisions in Article 50 of the Constitution show that "international organizations *are* covered by the [Treaty of Guarantee] and, if both the two named States are not members of the organization, by the veto".[14] This confuses the veto powers exercisable by an elected Turkish Cypriot Vice-President and the rights of the three guarantor States under Article I of the Treaty of Guarantee. If a treaty involves political or economic union with another State, Cyprus may not enter into that treaty, even with the consent of the Vice-President. Moreover whether Turkey and/or Greece are parties to such a treaty is irrelevant in terms of the application of Articles I and II of the Treaty of Guarantee. Cyprus may not enter into such a treaty, whatever the position of the other States may be.

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11 Security Council Res. 1251, 29 June 1999, para. 11.

12 Mendelson, Further Opinion, para. 10.

13 Mendelson, Further Opinion, para. 13.

14 Mendelson, Further Opinion, para. 17 (emphasis in original).

(d) He then argues that the EU is an economic and political union of States, even if it is not itself a State, and that in entering into the EU Cyprus is entering into a union with each of those other States in just the same way it would do if it entered into a federation.[15] That argument assumes, of course, that we are wrong in emphasising that Article I is limited to union with another particular State rather than a large group. But even on that assumption, it is not the case that Greece or the United Kingdom would exercise authority in Cyprus as part of the EU. The decisions and literature on the Maastricht Treaty, cited in our earlier opinion, demonstrate that this is not the case.[16] All sorts of international organizations involve coordination of activity, the "joint" pursuit of "common" policies in the political and economic field.[17] The EU is no doubt a very advanced example, but it is not, directly or indirectly, a vehicle for the exercise by one member State or its officials of public authority over another. The organs of the EU are not organs of any Member State or States. The context of the Treaty of Guarantee and related instruments show that, although there were to be controls on Cyprus becoming a member of international organizations including free trade areas, Article I was intended to address the separate and much narrower issue of a union with another State.

(e) Then he argues that, even if EU entry would not involve political or economic union with other States, it would "indirectly promote union with another State or States".[18] Of course the phrase "or States" does not appear in Articles I and II of the Treaty of Guarantee. But in any event we fail to see what *indirect* aim EU membership might have for Cyprus, i.e. how it would tend to produce union with any other State or States, or what *indirect* tendency it might foster which the Treaty of Guarantee seeks to prohibit. No doubt in 1959-60, Turkey sought to vest in an organ elected by the Turkish Cypriot community veto powers over joining organizations of which Turkey is not a member. But — we repeat — this separate Turkish aim was achieved by Article 50 of the Constitution, and not by the Treaty of Guarantee's prohibition on political union. We discuss this further in paragraphs 8-10 below.

8. There is also provided a note by Professor Mendelson dated 21 July 1997 in which he dismisses the Austrian case as only superficially similar. His main argument is that the other parties to the Austrian State Treaty of 1955 waived the provisions of Article 4 at the time. In other words, his view is that Austrian membership of the FU would have been a breach of the Article 4 of the Austrian State Treaty but for the consent of all the other parties to it.[19] He does not cite any statement to that effect by any of the other States parties, nor any of the extensive literature on the subject in English or German.[20] There is simply no evidence that the Soviet Union (or later the Russian Federation) considered that it was waiving rights under Article 4 of the State Treaty, or that its individual consent to Austrian accession was required.

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15 Mendelson, Further Opinion, para. 24.

16 J Crawford, A Pellet & G Hafner, "Republic of Cyprus: Eligibility for EU Membership", paras. 13-15.

17 Cf. Mendelson, Further Opinion, para. 24.

18 Mendelson, Further Opinion, para. 25.

19 M. Mendelson, "Note on Austria's Accession to the European Union", para. 1 and concluding para.

20 We referred to this material in 24-27 of our Opinion of 24 September 1997.

There is no suggestion that the consent of the other States parties to the Treaty of 1955 was sought or required to what would otherwise have been a breach of Article 4. Russian objections as articulated at the time concerned not Article 4 but the issue of neutrality. Similarly, Russian literature at the time of the accession stressed Austria's neutrality as a potential problem, but not Article 4.[21] The European Commission did not believe that Article 4 presented any difficulty, either.[22] In short, Professor Mendelson cites no evidence in support of his "waiver" theory, and we are aware of none.[23]

Article 50 of the 1960 Constitution

9. A second issue concerns Article 50 of the Constitution of 1960, which provides for the President and Vice-President to have, separately and conjointly, a right of veto in decisions concerning, *inter alia*, "foreign affairs, except the participation of the Republic in international organisations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate". Unlike Articles I and II of the Treaty of Guarantee, which are expressed as absolute prohibitions, Article 50 distinguishes between international organizations and pacts of alliance in which Greece and Turkey are, and those in which they are not, parties. It thus addresses what we understand to be Turkey's essential concern, which is that it does not wish Cyprus to become a party to the EU before it does. In other words, its real concern is one of timing, not the application of an absolute prohibition.

10. The difficulty, however, with Article 50 is that it is presently inoperative since no person holds or exercises the office of Vice-President, for reasons that are well known.[24] The question is whether this fact prevents Cyprus from applying to or becoming a member of the EU, and the answer is clearly no. As Article 50 of the Constitution recognises, Cyprus has the normal capacity of a State to enter into "international treaties, conventions and agreements" and to become a member of all kinds of international organizations and alliances. It provides for a procedural veto on such decisions, the veto to be cast within a prescribed period by a Vice-President elected under the Constitution. In the absence of a veto

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21 See, e.g., K.V. Voronov, "Chertvertoe rasshirenie ES: tormoz ili stimul integracii?" (The fourth widening of the EC: brake or stimulation of the integration?) in: *MeiMO* no. 8-96, Moscow 1996, 88).

22 See EC, Sec/91/1590 Final, 1 August 1991, summarised in *Bull EC* 7/8-1991, 81, as cited in our Opinion of 24 September 1997, para. 25.

23 Professor Mendelson's other arguments can be dealt with more briefly. He seeks to distinguish Article 4 of the Austrian State Treaty from the Treaty of Guarantee because the former specifically mentions Germany whereas the latter refers in general terms to "any other State". But the failure to mention Greece and Turkey specifically does not affect the matter. As everyone knows and as the *travaux préparatoires* show (see paragraph 4 (c) above), the problem in 1959-60 was union with one of those States, especially Greece. Then he argues that there has at least arguably been a fundamental change of circumstances between 1955 and 1991. But no party to the Austrian State Treaty has purported to rely on fundamental change of circumstances as a ground for the termination of the treaty, and as Article 62 of the Vienna Convention on the Law of Treaties makes clear, treaties do not automatically lapse on grounds of fundamental change; the change has to be invoked by a party. Finally he argues that "two wrongs do not make a right"; of course we agree, but that has nothing to do with the issue whether Austrian accession was a breach of Article 4, and the fact is that none of the concerned parties at the time so considered it.

24 They are briefly set out in our Opinion of 24 September 1997, para. 29.

duly cast in accordance with Article 50, the decision to accede is valid and effective. Nor could Cyprus, if it did accede to the EU, subsequently rely on Article 46 of the Vienna Convention on the Law of Treaties as a ground for disputing the validity of its accession.[25] The simple reason is that, in the absence of a veto cast by a person holding the office of Vice President in accordance with the Constitution, there is no breach, and certainly no manifest breach within the meaning of Article 46.

11. On this point, Professor Mendelson emphasises the international aspect of the Cyprus Constitution, the element of international guarantee involved, and the overlap between the Constitution, especially Article 50, and the Treaty of Guarantee.[26] With some of this we agree, but it is hardly relevant to the present point. There is a clear distinction between the existence of an international guarantee and the scope or application of particular provisions of a constitution which is subject to the guarantee. We have already pointed out the distinction between Article 50 of the Constitution (which is an important procedural provision concerned with treaty-making, even if it is for the time being inoperative) and Article I of the Treaty of Guarantee which is a prohibition on the making of a certain limited class of treaties at all, by any authority in Cyprus whatever. Professor Mendelson elides the distinction entirely.[27]

Article 170 of the 1960 Constitution

12. A third issue concerns Article 170 (1) of the 1960 Constitution, which entitles Greece, Turkey and the United Kingdom to seek most favoured nation (mfn) treatment from Cyprus, "by agreement on appropriate terms" in respect of "all agreements whatever their nature may be." It has been argued that Cyprus as an EU Member will not be in a position to comply with Article 170 so far as Turkey is concerned. The short answer to this is that there is a general understanding that entry to the EU does not trigger general mfn obligations of the entrant so far as third States are concerned. This is consistent with Article XXIV (5) of the GATT.[28] It is a position which Turkey itself has accepted, both as a GATT Member, as an applicant for EU membership, and in bilateral arrangements with Cyprus.[29]

13. In any event, Article 170 only operates by agreement, which agreement has to be "on appropriate terms". Even if it were applicable in principle to EU membership (which it is

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25 Under Art. 46 only the State whose fundamental rules as to treaty-making have been manifestly breached can invoke the breach.

26 Mendelson, Further Opinion, paras. 37-38.

27 Professor Mendelson also raises the question whether the breakdown of Article 50 may be "wholly or mainly the fault of the Greek Cypriot majority": Mendelson, Further Opinion, para. 37. For our part, we have sought to avoid controversy on historical issues of the 1960s. Most observers would say that there was fault on all sides, including both communities within Cyprus. In any event, whatever the responsibility of the various actors (including the three Guarantors) for the constitutional and international crisis of that period, the issue is the conduct of the foreign policy of Cyprus at the present time, and the international law on this point is as we have stated it.

28 See also the Understanding on the Interpretation of Article XXIV of the GATT 1994, in WTO, *The Results of the Uruguay Round of Multilateral Trade Negotiations. The Legal Texts* (Geneva, 1994) 31.

29 Cyprus-Turkey, Trade Agreement, 9 November 1963, Art. 1. See also the identically phrased Trade Agreement between Greece and Cyprus, 24 August 1962.

not), all Article 170 would do would be to call on the parties to reach agreement in particular "on appropriate terms" for granting mfn treatment.

14. Professor Mendelson regards this issue as "subsidiary",[30] and we agree. He does not argue that "the entry of Cyprus into the EU without Turkey would violate some existing right of Turkey to MFN treatment";[31] again we agree. He does however argue that Greece and Greek citizens will be advantaged in Cyprus compared to Turkey and Turkish citizens, and to some extent this is true. Our point was that, purely as a question of law and of the application of Article 170, entry into a regional economic union does not trigger mfn obligations, and that Turkey itself accepts this.[32] The economic disadvantages for Turkey of its non-membership of the EU remain matters to be addressed at the level of policy by the EU, as well as by Turkey.[33] No doubt they will be, since the long-term interests of the region can only be addressed by a policy of inclusion.

Conclusions

15. For the reasons we have given, we remain firmly of the opinion that there is no legal basis for the argument that Cyprus is prevented by the Treaty of Guarantee, or by any provisions of the Constitution of 1960, from becoming a member of the EU or from complying with its treaty obligations towards Turkey once it becomes a member.

James Crawford
Whewell Professor of International Law, University of Cambridge

Gerhard Hafner
Professor of International Law, University of Vienna

Alain Pellet
Professor of International Law, University of Paris-X

17 November 2001

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30 Mendelson, Further Opinion, para. 39.

31 Ibid.

32 So, apparently, does Professor Mendelson; at least he does not argue the contrary.

33 Professor Mendelson also points to the difficulties of applying EU law uniformly within Cyprus: Further Opinion, para. 42. We understand this issue is being addressed in the accession negotiations. Again, however, it is not a legal barrier to eligibility.

United Nations S/2001/1223

Security Council

Distr.: General
19 December 2001

Original: English

Letter dated 19 December 2001 from the Permanent Representative of Afghanistan to the United Nations addressed to the President of the Security Council

I have the honour to forward herewith the text of a letter dated 19 December 2001 from Dr. A. Abdullah, Acting Minister for Foreign Affairs of the Islamic State of Afghanistan, addressed to you (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(*Signed*) R. **Farhadi**
Ambassador
Permanent Representative

01-70745 (E) 191201

Annex to the letter dated 19 December 2001 from the Permanent Representative of Afghanistan to the United Nations addressed to the President of the Security Council

I refer to my letter to you of 14 December 2001, which was written in my capacity as the Acting Minister for Foreign Affairs of the Islamic State of Afghanistan. That letter indicated that the Government of Afghanistan has agreed to the deployment of multinational security forces in Afghanistan on the basis of Chapter VI of the Charter of the United Nations.

The Security Council is aware that, in accordance with the Bonn agreement (S/2001/1154), an Interim Administration will be established in Afghanistan on 22 December 2001. As the member of the Interim Administration responsible for foreign affairs, I should like to inform the Council that, taking into account all relevant considerations, an international security force could be deployed under Chapters VI or VII of the Charter.

The Afghan authorities would like to reiterate to the Security Council that, in each case of deployment of forces, earlier coordination terms are to be agreed upon with the Afghan authorities in Kabul regarding the nationality and the size of the military units, their intended location on Afghan territory, the duration and the timetable of their assignment and the modalities of their role on the ground.

I would like once again to express my appreciation to the Security Council for its efforts aimed at the strengthening of security and stability in Afghanistan.

(*Signed*) A. **Abdullah**
Minister for Foreign Affairs
Interim Administration of Afghanistan

United Nations S/2001/1224

Security Council

Distr.: General
20 December 2001
English
Original: French

Letter dated 19 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Switzerland, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

01-71129 (E) 070102 070102

Annex

Letter dated 19 December 2001 from the Permanent Observer of Switzerland to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I have the honour to transmit to you, enclosed herewith, the report from Switzerland submitted pursuant to paragraph 6 of resolution 1373 (2001) (see appendix).

I should be grateful if you would have this letter and the annexed report circulated as a document of the Security Council.

(*Signed*) Jenö C. A. **Staehelin**
Ambassador

Appendix

Report on counter-terrorism submitted by Switzerland to the Security Council Committee established pursuant to resolution 1373 (2001)

Berne, 19 December 2001

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Introduction

All of Switzerland was profoundly shocked by the attacks against the United States of America that took place on 11 September 2001. These attacks reached an untenable level of violence and reflect an insane criminal intent.

All States around the world must collaborate actively in bringing to justice the perpetrators of these attacks and putting an end to the activities of the groups which organized them. Switzerland has always considered the fight against terrorism to be a priority. It is determined to stand up to this scourge by cooperating closely with the international community.

The Swiss Government is also mindful of the fact that the fight against terrorism could come into conflict with the principles of a free and tolerant society. It is essential that the measures taken to put an end to the activities of terrorist groups be respectful of the fundamental principles that form the core of our societies, such as justice, human dignity and religious tolerance.

Switzerland considers, furthermore, that international peace and security can be guaranteed in the long run only if States strengthen their cooperation with a view to eradicating poverty, preventing and resolving conflicts, and effectively promoting human rights and the rule of law.

Without an improvement in the living conditions of populations and universal respect for fundamental freedoms, the long-term effectiveness of counter-terrorism measures cannot be guaranteed.

In its resolution 1373 (2001), of 28 September 2001, the Security Council called on all States to take specific measures to combat international terrorism and to submit a report on the implementation of such measures to the Committee established pursuant to that resolution. The Swiss Government attaches the utmost importance to the implementation of that resolution.

Part One of the report outlines Switzerland's commitment to fighting terrorism. Part Two provides a detailed analysis of the means available to Switzerland in order to meet the Council's requirements with regard to the fight against terrorism and the measures taken or envisaged in that context. It follows the outline of the aforesaid resolution and the guidelines of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (the Counter-Terrorism Committee).

Annex I contains articles of the Swiss Penal Code and references to the laws mentioned in the report. Annex II lists the treaties on terrorism to which Switzerland is a party. Annex III provides contact information for the Committee's contact points.

Part One: Switzerland's commitment to fighting terrorism

At the international level

The fight against international terrorism has long been a major concern of Switzerland. It employs all the means at its disposal to prevent financial or logistical support, as well as propaganda, for terrorist groups or acts. Furthermore,

Switzerland has collaborated and is continuing to collaborate closely with all States around the world in fighting terrorism, whether on the basis of international treaties or through the Act on Judicial Cooperation in Criminal Matters. The following examples illustrate Switzerland's desire for cooperation. Following the attack against a United States aircraft over Lockerbie, Scotland, United Kingdom, Switzerland provided the requesting State with ample documentation containing information and evidence. Moreover, the perpetrators of the 1991 murder in France of the head of the Iranian opposition, Shapur Bakhtiar, were arrested in Switzerland and extradited to France. Lastly, since 1990, Switzerland has systematically applied the non-military sanctions decided on by the Security Council. For instance, it implemented Security Council resolutions 1267 (1999) and 1333 (2000) instituting measures against the Taliban (by means of an order dated 2 October 2000).

Switzerland wishes in particular to prevent its financial market from being used for criminal purposes. It should be noted that, in Switzerland, banking secrecy cannot be an impediment to justice since it can be lifted once a request for cooperation is made or a criminal proceeding is instituted. The competent authorities can, where necessary, freeze the financial assets used to carry out such activities. The anti-money-laundering law, moreover, requires financial intermediaries to notify the competent authority and to freeze assets which they reasonably suspect of being linked to criminal activities. In order to further enhance the effectiveness of the existing rules, Switzerland plans to implement the special recommendations adopted by the Financial Action Task Force on Money Laundering (FATF) following the attacks of 11 September with a view to strengthening measures to prevent the financing of terrorism. Switzerland has made suggestions within FATF for strengthening "know your customer" rules and for increased surveillance of the non-banking sector.

The attacks of 11 September 2001 demonstrate once again the need for greater police cooperation among all States. Switzerland is already working in close cooperation with foreign police authorities. The International Criminal Police Organization (Interpol) channel is used to disseminate police information and requests for support, research and judicial cooperation. In order to facilitate criminal prosecutions, liaison officers of the Federal Police Office are stationed in various European countries and in the United States. Switzerland has concluded bilateral agreements on police cooperation with all the neighbouring countries and has established particularly close security cooperation with them in the following areas: illegal immigration, smuggling networks, trafficking in human beings, money-laundering and extremism. Furthermore, the Swiss domestic intelligence service and its European partners are working in close cooperation. Alongside the existing forms of cooperation in the fight against international crime, negotiations are currently being conducted with a view to Switzerland's direct participation in certain European Union instruments (European Police Office (Europol), Schengen).

The Swiss Government has set itself the goal of becoming a party to the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Terrorist Bombings in the coming year. With the ratification of these two conventions, Switzerland will be a party to all of the United Nations conventions on fighting terrorism (see annex II).

Switzerland participated in the drafting of the Organization for Security and Cooperation in Europe (OSCE) anti-terrorism action plan adopted at the OSCE

ministerial conference on 4 December 2001. Its primary goal is to utilize the OSCE instruments to combat the underlying causes of terrorism. The Bishkek conference of 13 and 14 December 2001, in which Switzerland participated, was the first opportunity to transpose this action plan to the regional level.

Switzerland is also taking part in the drafting of the Euro-Atlantic Partnership Council action plan (2002-2004), which has a specific chapter on fighting terrorism. This chapter provides, inter alia, for the implementation of cooperation programmes between member States in order to strengthen their capacity to prevent and palliate chemical, biological and nuclear attacks against the civilian population.

Switzerland supports and participates actively in the anti-terrorism efforts of the Council of Europe. It presides over the Human Rights Steering Committee subgroup responsible for drawing up guidelines to assist member States in dealing with movements which threaten the fundamental values and principles of the Council of Europe. It is also a member of the Multidisciplinary Group on Terrorism, whose mandate includes coordinating the efforts undertaken by the various Council of Europe bodies in the fight against terrorism, and assessing the extent of revision required by the Council of Europe instruments on the subject.

Switzerland attaches great importance to combating the uncontrolled and illegal use of light weapons. The Swiss authorities are taking the steps required for the implementation of the United Nations plan of action and the OSCE document on the subject. They support the implementation of these measures at the regional and international levels. In addition, Switzerland and France have launched an initiative to trace, mark and register light weapons.

Switzerland provides the Organization for the Prohibition of Chemical Weapons with personnel, protective equipment and chemical detection equipment. Switzerland proposed to strengthen judicial cooperation within the framework of the Fifth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

Lastly, Switzerland supported the publication by the World Health Organization (WHO) of a paper entitled "Public health response to biological and chemical weapons". It provides financial support to WHO with a view to re-establishing task forces capable of rapidly detecting biological agents used in military or terrorist incidents.

At the domestic level

A criminal investigation was opened in order to shed light on any possible links between events that have occurred in Switzerland and the terrorist attacks perpetrated in the United States. Switzerland promptly provided the information required in response to a cooperation request from the United States; it also supported that State by transmitting information to it spontaneously. Switzerland also addressed judicial cooperation requests to the United States authorities. Moreover, the Swiss Government has banned all activities of the Al Qaeda organization in its territory.

Switzerland has systematically implemented the decisions of the Security Council Committee established pursuant to resolution 1267 (1999) concerning

Afghanistan (the Afghanistan sanctions committee) in the wake of the events of 11 September 2001, namely, freezing the assets of individuals and entities linked to terrorism. The Swiss competent authorities have also transmitted to all financial intermediaries the lists of names of individuals and entities supplied by the United States authorities, reminding them of their due diligence obligations, particularly with regard to money-laundering.

Lastly, a special unit (Task Force Terror USA) has been set up within the Department of Justice and Police to coordinate the criminal investigation that has been opened in Switzerland, and to ensure cooperation with foreign authorities. Meanwhile, an interdepartmental group on terrorism, comprising the relevant offices of the various federal departments, has been charged with coordinating the efforts. In particular, this group reviewed the compatibility of the Swiss legal system with Security Council resolution 1373 (2001).

Part Two: Implementation of resolution 1373 (2001) in Switzerland[1]

In Swiss law there are many penal norms applicable to terrorist acts and their financing. There are, for example, provisions relating to the following offences: murder (article 112 of the Penal Code (PC)), hostage-taking (art. 185 PC), use of explosives with criminal intent (art. 224 PC), spreading of an illness to humans (art. 231 PC). All of these offences carry prison terms. Heavy penalties are provided, in particular, where a criminal act endangers the lives and physical integrity of several persons or causes major damage. Instigation, complicity and attempt are punishable. While Swiss penal law does not contain specific anti-terrorism provisions, these norms nonetheless constitute, for the time being, a framework sufficient to meet the needs of controlling this type of crime.

Acts preparatory to the commission of certain offences are also punishable (art. 260 bis PC), even before a planned terrorist act has begun to be implemented. This provision makes it possible to put a stop to preparations for a terrorist act and, in particular, to its financing. It provides for a penalty of up to five years in prison.

The reprehensible nature of certain acts is also extended to membership and support of a criminal organization, especially a terrorist one (art. 260 ter PC). The maximum penalty provided for this offence is five years in prison.

Lastly, Switzerland is capable of responding rapidly to any request by a State for judicial cooperation in criminal matters, even where no bilateral or multilateral cooperation treaty exists.

[1] Part Two of the report enumerates the means available to Switzerland in order to meet the Security Council's requirements with regard to the fight against terrorism and the measures taken or envisaged in that context. Part Two follows the outline of Security Council resolution 1373 (2001) and the guidelines of the Counter-Terrorism Committee. The articles of the Swiss Penal Code which are mentioned hereunder appear in annex I. The numerous laws mentioned were not reproduced in order to avoid lengthening the report; they can, however, be consulted on the Internet. The links are indicated in annex I.

1. Measures to combat the financing of terrorism (para. 1 of the resolution)

Subparagraph (a) — What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d).

Means available

Switzerland does not tolerate the notion of terrorists being able to use the Swiss financial system, nor will it tolerate that notion in the future. The banking sector in its entirety is required to cooperate in this effort. Banking secrecy, therefore, is not in any way an impediment to the fight against terrorism and other crimes. Any account in Switzerland must be frozen and all information provided as soon as criminal abuse is suspected. Switzerland can order interim measures, such as the freezing of bank accounts (art. 18 of the Federal Act on Judicial Cooperation in Criminal Matters), whether in the context of a domestic proceeding or in response to a judicial cooperation request.

A criminal proceeding is instituted in Switzerland if:

1. An act is committed in Swiss territory (art. 3 PC);

2. A Swiss national participates in, or is a victim of, a terrorist act committed abroad (arts. 5 and 6 PC);

3. The principle of universality provided for in article 6 bis PC is applicable.

The Swiss legal system contains a range of provisions making it possible to effectively prevent and punish the financing of terrorism, including preparatory acts (art. 260 bis PC). Where necessary, financial assets can be frozen rapidly. Depending on the circumstances, sequestration measures can be ordered with a view to subsequent confiscation, provided that a criminal proceeding has been instituted. All assets that are proceeds of an offence or that were intended as an incentive or a reward for the perpetrator of an offence can be confiscated (art. 59 (1) PC). There is a further possibility of ordering a sequestration measure with a view to confiscation from a third party (art. 59 (1) (2) PC) and from entities. There are particularly broad possibilities for sequestration and confiscation with regard to the assets of organized crime. A judge can order confiscation of all assets over which a criminal organization has power of alienation (art. 59 (3) and art. 260 ter PC); this is so regardless of whether there is proof of criminal origin. With regard to the assets of a person who participates in or lends support to a criminal organization, the organization is presumed to have power of alienation until proven otherwise.

The Swiss Penal Code (art. 305 bis PC) penalizes money-laundering stemming from a crime or aiding in its perpetration, whether the primary offence is committed in Switzerland or abroad. The maximum penalty is three years in prison. In the event that money-laundering is carried out by a member of a criminal organization, the penalty can be up to five years in prison (art. 305 bis PC).

Article 305 ter PC provides a maximum penalty of one year in prison for the failure to monitor financial transactions, particularly the failure to verify the economic beneficiary.

The anti-money-laundering law supplements the aforesaid provisions of the Penal Code. Under this law, any financial intermediary who suspects that assets are linked to money-laundering, are of criminal origin, or that a criminal organization has power of alienation over these assets, must:

(a) So inform the Money Laundering Reporting Office (the authority responsible for verifying the validity of account blockages);

(b) Block the assets immediately for up to five business days.

During this period, the competent prosecuting authority considers whether the blockage of these accounts should be upheld through a court order.

Measures taken or envisaged

The Office of the Public Prosecutor of the Confederation, the prosecuting authority, has opened a judicial police investigative procedure against persons unknown for, inter alia, kidnapping, hostage-taking and murder, crimes committed abroad against Swiss nationals and offences committed on board aircraft, in order to shed light on any possible links between events that have occurred in Switzerland and the terrorist attacks perpetrated in the United States. In this context, the Public Prosecutor's Office has blocked bank accounts. One of the terrorists transited through Zurich Airport on 8 July 2001. Nevertheless, at present and to our knowledge, there is no evidence suggesting that individuals or companies based in Switzerland played a role in planning the logistical aspects of the terrorist attacks committed in the United States on 11 September.

The Afghanistan sanctions committee decided on several occasions to expand the list of individuals and entities subject to the financial sanctions imposed by Security Council resolutions 1267 (1999) and 1333 (2000). The Swiss order of 2 October 2000 instituting measures against the Taliban was rapidly and successively adapted to reflect these changes on 12 April, 12 September, 25 October and 30 November 2001. The financial assets of the individuals referred to in this order were frozen and the provision of funds to these same individuals was prohibited. At the end of November 2001, some 30 bank accounts belonging to individuals and entities and totalling approximately $15 million had been frozen, and a criminal investigation had been opened into a company based in Lugano. Some of these accounts were also frozen by the Public Prosecutor's Office.

The Federal Banking Commission (the bank monitoring authority) and the Anti-Money Laundering Authority (the authority monitoring the non-banking sector) forwarded the lists of names of individuals and entities transmitted by the United States authorities to all financial intermediaries and reminded them of their due diligence obligations. Due diligence obligations require financial intermediaries to freeze assets which they have serious reasons to believe are linked to criminal activities (cf. para. 1 (a)).

In this connection, Switzerland would find it very helpful if the Counter-Terrorism Committee was competent to centralize and manage the lists of names of individuals and entities whose assets or financial transactions are to be blocked.

As one of the world's pre-eminent financial centres, Switzerland wishes to see more ambitious international standards developed to combat financial flows of criminal origin. Switzerland is a member of FATF and collaborated actively in the

drafting of that group's Forty Recommendations. These recommendations constitute the internationally recognized standard of measures which countries should adopt to combat money-laundering effectively. They deal with countries' legal and financial systems and with international cooperation. Switzerland has incorporated them fully into its legislation (PC, money-laundering law). In the wake of the events of 11 September, Switzerland supported the adoption of specific FATF recommendations on the fight against terrorism, and it has undertaken to implement them by June 2002 (Swiss legislation in this area is already largely compatible). Switzerland made suggestions for strengthening "know your customer" rules and for increased surveillance of the non-banking sector. FATF welcomed the Swiss proposals.

Switzerland initiated an international effort to prevent deposits of funds of criminal origin belonging to persons exposed to political risk.

In 1998, Switzerland launched an international initiative called the "Interlaken process", aimed at the development of targeted financial sanctions affecting the leaders of countries which violate international peace (including through support of terrorism) without harming the civilian population.

Subparagraph (b) — What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

Means available

The legislation in force penalizes the wilful collection or provision of funds for the commission of terrorist acts falling under certain offences enumerated in annex I. So long as the primary act has not been carried out, the perpetrator or individual who takes part in the financing can be prosecuted for attempt, instigation or complicity. The act of organizing the financing of a terrorist act can constitute an act preparatory to a criminal act under article 260 bis PC. The maximum penalty provided in this case is five years in prison.

Article 260 ter PC is also applicable where an association of individuals constitutes a criminal organization. This being the case, the pursuit of a terrorist aim need not already have been concretized in the perpetration of terrorist acts. Article 260 ter PC comes into play, in particular, where no causal relationship can be established between the act of support (financing) and the envisaged offence. A maximum penalty of five years in prison is provided.

Measures taken or envisaged

On 7 November 2001 the Federal Council banned the activities of the Al Qaeda terrorist organization in Switzerland. The penal norm penalizes, in particular, the act of participating in a banned grouping, providing it with physical or material support, organizing propaganda actions on its behalf or on behalf of its goals, recruiting adherents or promoting its activities in any other way. The organization's assets will be confiscated, as appropriate. An individual who violates this ban is liable to three years in prison or a fine. No terrorist organizational structure has been detected in Switzerland to date. The purpose of the ban decreed by the Federal Council is therefore largely preventive.

Subparagraph (c) — What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Means available

The Federal Council is empowered to order such measures as it deems appropriate to safeguard the country's interests (art. 184 (3) of the Federal Constitution). On this basis, Switzerland applied all the financial sanctions (freezing of funds and prohibition against providing funds) imposed by the Security Council since the start of the 1990s, such as the financial sanctions provided for in Council resolutions 1267 (1999) and 1333 (2000).

On the same basis, the Federal Council can issue temporary orders blocking accounts belonging to specific individuals (as was done, for instance, in respect of the accounts of former presidents Marcos and Mobutu Sese Seko).

There is a further possibility of sequestering and confiscating assets in the context of a criminal proceeding (see para. 1 (a)).

Measures taken or envisaged

For the judicial measures, see paragraph 1 (a).

Subparagraph (d) — What measures exist to prohibit the activities listed in this subparagraph?

Means available

The means enumerated under subparagraphs (a), (b) and (c) make it possible to suppress terrorist activities in Switzerland. They are particularly effective with regard to the property of criminal organizations.

Next, there is the possibility, depending on the specific circumstances, of issuing orders based directly on the Constitution. Thus, the Federal Council, by a decree of 30 November 2001, prohibited the collection of funds and propaganda activities on behalf of the Liberation Tigers of Tamil Eelam on the occasion of a demonstration held on 2 December 2001, and ordered the sequestration and confiscation of the objects and assets concerned.

Measures taken or envisaged

The chief measures taken are described under subparagraphs (a), (b) and (c).

It should be noted that a forthcoming revision of the Penal Code holds entities primarily responsible for certain offences (organized: 260 ter PC; money-laundering: 305 bis PC; bribing of Swiss public servants: 322 ter PC; granting of unfair advantage: 322 quinquies PC; bribing of foreign public servants: 322 septies PC). The Federal Council intends to implement this reform as soon as possible.

2. Measures to combat terrorist acts (para. 2 of the resolution)

Subparagraph (a) — What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Means available

Recruitment is punishable in Switzerland:

(a) Where the recruiters use coercive means to incite individuals to join a group (art. 271 PC); or

(b) Where it is linked to sufficiently concrete preparatory acts (art. 260 bis PC);

(c) Under support for a criminal organization (art. 260 ter PC);

(d) In particular, where firearms and munitions are sold, leased, given, made available to a third party or procured with the knowledge that they are to be used in the commission of an offence or a crime (art. 260 quater PC).

Measures taken or envisaged

See paragraph 1 (b) and (c).

Subparagraph (b) — What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

Means available

Switzerland acts both to prevent and to suppress. Article 2 of the law instituting measures for the maintenance of internal security requires the competent authorities to adopt preventive measures to combat terrorism. Accordingly, the Federal Police Office has established a Division of Analysis and Prevention responsible for ongoing assessment of the threat that terrorism represents.

The Public Prosecutor's Office and the Federal Police Office have set up a unit called "Task Force Terror USA" in order to enhance the effectiveness of cooperation with foreign authorities and to carry out the judicial police investigative procedure instituted following the events of 11 September. It serves as a centre for coordinating Swiss investigations, defining missions of inquiry, evaluating reports, setting priorities and establishing contact and cooperation with the cantonal and foreign police and prosecuting authorities. Task Force Terror USA has several dozen staff members specializing in various security fields. Its work in relation to the investigative procedure under way is subject to tight restrictions on information so as not to prejudice the investigation.

Within the Federal Justice Office, the International Judicial Cooperation Division is responsible for dealing with requests for judicial cooperation and extradition. The Division receives requests for criminal prosecution from foreign authorities seeking the transmittal of exhibits, the hearing of witnesses, the seizure of assets, the extradition of wanted persons, and so on.

Measures taken or planned

See Part One, third paragraph.

Subparagraph (c) — What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.

Means available

The case files of asylum-seekers from specific countries (a specific list emanating from the Federal Police Office) are subject to systematic review and decision by the Federal Police Office. This list is updated periodically.

Article 53 of the asylum law further provides that asylum shall not be granted to a refugee who is deemed unworthy owing to reprehensible acts, who has undermined the internal or external security of Switzerland, or who places the country at risk. Refugee status can also be revoked or recognition as a refugee withdrawn (art. 63 of the asylum law) if, for instance, the refugee has undermined the internal or external security of Switzerland, places the country at risk or has committed particularly reprehensible criminal acts. All terrorist acts fall under this definition.

The Federal Office for Refugees transmits to the prosecuting authorities the names of persons who may not receive refugee status pursuant to article 1 (f) of the United Nations Convention relating to the Status of Refugees (perpetration of a crime against peace, a war crime or a crime against humanity).

Since 1994 the Federal Office for Refugees has refused to grant refugee status to a dozen Afghan nationals and to several Iraqi nationals on the basis of article 1 (f) of the 1951 Convention relating to the Status of Refugees.

Measures taken or envisaged

The above-mentioned list of countries has been updated since 11 September 2001 by the Federal Police Office.

Subparagraph (d) — What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

Means available

Under article 13 of the act on the entry and residence of aliens, the federal authorities may deny the entry into Switzerland of undesirable aliens. A person need not pose a specific danger to Switzerland. Obviously, persons suspected of having ties with terrorists may not be admitted into Swiss territory.

In any case, under the Constitution, the Federal Council may enact specific legislation where the circumstances require the removal of certain persons.

Measures taken or envisaged

Enhanced border controls: see paragraph 2 (g).

Subparagraph (e) — What steps have been take to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Means available

The principle of compulsory prosecution and the principle of legality guarantee the effective prosecution of offences. Terrorist offences are crimes punishable by life imprisonment in some instances.

Measures taken or envisaged

See paragraph 1 (d).

Subparagraph (f) — What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

Means available

In addition to signing the multilateral conventions against terrorism (see annex II), Switzerland has put into place a network of bilateral instruments (with, inter alia, the United States) in the specific fields of judicial cooperation in criminal matters and the extradition and transfer of convicted persons, all of which are designed to combat crime, including terrorism.

The act on judicial cooperation in criminal matters and its implementing regulations enable Switzerland to cooperate in judicial matters with States with which it is not bound by treaty (article 1 of the Act on Judicial Cooperation in Criminal Matters). This act provides for interim measures, such as the freezing of bank accounts (article 18). Where proceedings are initiated in Switzerland, it authorizes the spontaneous transmission of evidence and information to foreign authorities (article 67).

Switzerland also cooperates with the international tribunals responsible for prosecuting serious violations of international humanitarian law (the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994) and with Interpol. Moreover, it has ratified the Rome Statute of the International Criminal Court and has adopted the federal act on cooperation with the International Criminal Court. In December 2000, it also signed the United Nations Convention against Transnational Organized Crime.

Measures taken or envisaged

Switzerland promptly and fully provided the information required in response to a cooperation request from the United States; it also supported that State by

transmitting information to it spontaneously. Switzerland also addressed judicial cooperation requests to the United States authorities.

Subparagraph (g) — How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

Means available

Federal and cantonal authorities check the travel documents and identity papers of aliens. Forged or falsified documents and authentic documents that are used fraudulently are confiscated or seized.

Measures taken or envisaged

Swiss diplomatic missions, border posts and the cantonal immigration authorities have been instructed to examine with particular care the authenticity and lawful possession of travel documents.

The Swiss Federal Aliens Office recently introduced a new security seal that prevents falsification more effectively. A computer-based visa issuance system was developed to which the main diplomatic missions are already linked online. By the end of 2002, all Swiss diplomatic missions and border posts will be linked to this system, permitting a smoother flow of information.

Border posts have been instructed to enhance controls at the country's entry points on grounds of immigration policy and security. Diplomatic missions have been requested to comply strictly with the relevant directives.

A number of plans aimed at enhancing efforts to prevent the forgery of alien residence permits and travel documents are under preparation.

3. International cooperation with respect to terrorism (para. 3)

Subparagraph (a) — What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

Means available

Police cooperation — prevention: see paragraph 2 (b) and the first part of paragraph 3.

General police cooperation: see paragraph 2 (f).

Counterfeit or falsified travel documents of asylum-seekers: see paragraph 2 (g).

Measures taken or envisaged

The Working Group on Facilitation of the European Civil Aviation Conference (ECAC) has been entrusted with the development of a facilitation information system on illegal immigration (ECFALIS). This system, provisionally funded by Switzerland, should enable ECAC member States and their airlines to alert each

other via electronic mail about falsified documents or possible clandestine immigration. The pilot programme started in April 2001. ECAC has assigned top priority to making the ECFALIS information system fully operational.

Police cooperation — prevention: see paragraph 2 (b) and (f) and the first part of paragraph 3.

Counterfeit or falsified travel documents: see paragraph 2 (g).

Subparagraph (b) — What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

Exchange of information between police services: see paragraph 2 (b) and (f) and the first part of paragraph 3.

Judicial cooperation: see paragraph 2 (f).

The Money Laundering Reporting Office is in a position to exchange information with its foreign counterpart authorities. Such authorities, referred to as financial intelligence units, are part of the Egmont Group, which includes Switzerland and 58 other States. That network has been extensively used, especially since the events of 11 September.

Exchange of information between police services: see paragraph 2 (b) and (f) and the first part of paragraph 3.

Subparagraph (c) — What steps have been taken to cooperate in the areas indicated in this subparagraph?

Judicial cooperation: see paragraph 2 (f).

Subparagraph (d) — What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Means available

Switzerland is a party to 10 of the 12 United Nations conventions and protocols for combating terrorism (see annex II). It is also a party to the Council of Europe Convention on the Suppression of Terrorism.

Measures taken or envisaged

The Federal Council's goals for 2002 include ratifying the International Convention for the Suppression of the Financing of Terrorism and acceding to the International Convention for the Suppression of Terrorist Bombings.

Subparagraph (e) — Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

Judicial cooperation: see paragraph 2 (f).

Subparagraph (f) — What legislation, procedures and mechanisms are in place for ensuring that asylum-seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

In compliance with international humanitarian law, Switzerland takes all possible steps to prevent the abuse of refugee status by terrorists. In addition to the measures referred to in paragraph 2 (c), the Federal Office for Refugees prepares individual country analyses providing instructions on the processing of asylum applications from these countries. Those analyses are consulted regularly before any decision on the granting of asylum is made.

Subparagraph (g) — What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

Asylum: see paragraph 2 (c).

Article 3, paragraph 2, of the Act on Judicial Cooperation in Criminal Matters prevents claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Under that article, anyone who has endangered or threatened to endanger the freedom, life or physical integrity of individuals, including by hijacking aircraft, taking hostages or the use of weapons of mass destruction, may not raise the political offence exception.

At the request of the State where the offence was committed, Switzerland may punish the perpetrator of an act committed abroad if extradition is not possible, if the person is to be prosecuted in Switzerland for other, more serious crimes, and if the requesting State guarantees that it will not prosecute him for the same offence once he has been acquitted or has served his sentence in Switzerland (art. 85 of the act on judicial cooperation in criminal matters).

Asylum: see paragraph 2 (c).

Measures to be taken by Switzerland

- Accession to the International Convention for the Suppression of Terrorist Bombings (in 2002);
- Ratification of the International Convention for the Suppression of the Financing of Terrorism (in 2002);
- Implementation of the special recommendations to strengthen measures to prevent terrorist financing adopted by FATF in the wake of the attacks of 11 September (by June 2002);
- Linking all Swiss diplomatic missions to the computer-based visa issuance system in order to enhance the efforts to combat falsified documents;
- Forthcoming revision of the Penal Code to provide for the primary responsibility of entities for certain offences (organized crime: art. 260 ter PC; money-laundering: art. 305 bis PC; bribing of Swiss public servants: art. 322 ter PC; granting of an unfair advantage: art. 322 quinquies PC; bribing of foreign public servants: art. 322 septies PC).

Annexe I

Dispositions légales permettant de lutter contre le terrorisme

Le droit pénal suisse ne contient pas de dispositions spécifiques sur le terrorisme. Cependant, les articles suivants permettent de poursuivre efficacement tout individu engagé dans des actes terroristes. Dans plusieurs de ces articles, la peine prévue est la réclusion à vie.

Non seulement la perpétration d'actes terroristes est punissable mais également la préparation, l'instigation, la complicité et la tentative.

1. Dispositions du Code pénal applicables à des actes de terrorisme
(<http://www.admin.ch/ch/f/rs/c311_0.html>)

Crimes ou délits commis en Suisse (art. 3 du Code pénal)

1. Le présent code est applicable à quiconque aura commis un crime ou un délit en Suisse. Si, à raison de cette infraction, l'auteur a subi totalement ou partiellement une peine à l'étranger, le juge suisse imputera la peine subie sur la peine à prononcer.

2. L'étranger poursuivi à l'étranger à la requête de l'autorité suisse ne pourra plus être puni en Suisse pour le même acte: si le tribunal étranger l'a acquitté par un jugement passé en force; s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite. S'il n'a pas subi cette peine, elle sera exécutée en Suisse; s'il n'en a subi qu'une partie à l'étranger, le reste sera exécuté en Suisse.

Crimes ou délits commis à l'étranger contre un Suisse (art. 5 du Code pénal)

1. Le présent code est applicable à quiconque aura commis à l'étranger un crime ou un délit contre un Suisse, pourvu que l'acte soit réprimé aussi dans l'État où il a été commis, si l'auteur se trouve en Suisse et n'est pas extradé à l'étranger, ou s'il est extradé à la Confédération à raison de cette infraction. La loi étrangère sera toutefois applicable si elle est plus favorable à l'inculpé.

2. L'auteur ne pourra plus être puni à raison de son acte s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite.

3. S'il n'a pas subi à l'étranger la peine prononcée contre lui, elle sera exécutée en Suisse; s'il n'a subi à l'étranger qu'une partie de cette peine, le reste sera exécuté en Suisse.

Crimes ou délits commis à l'étranger par un Suisse (art. 6 du Code pénal)

1. Le présent code est applicable à tout Suisse qui aura commis à l'étranger un crime ou un délit pouvant d'après le droit suisse donner lieu à extradition, si l'acte est réprimé aussi dans l'État où il a été commis et si l'auteur se trouve en Suisse ou s'il est extradé à la Confédération à raison de son infraction. La loi étrangère sera toutefois applicable si elle est plus favorable à l'inculpé.

2. L'auteur ne pourra plus être puni en Suisse: s'il a été acquitté à l'étranger pour le même acte par un jugement passé en force; s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite.

3. S'il n'a subi à l'étranger qu'une partie de la peine prononcée contre lui, cette partie sera imputée sur la peine à prononcer.

Crimes ou délits commis à l'étranger (art. 6 *bis* du Code pénal)

1. Le présent code est applicable à quiconque aura commis à l'étranger un crime ou un délit que la Confédération, en vertu d'un traité international, s'est engagé à poursuivre, si l'acte est réprimé aussi dans l'État où il a été commis et si l'auteur se trouve en Suisse et n'est pas extradé à l'étranger. La loi étrangère sera toutefois applicable si elle est plus favorable à l'inculpé.

2. L'auteur ne pourra plus être puni en Suisse: s'il a été acquitté dans l'État où l'acte a été commis, pour le même acte par un jugement passé en force; s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite; s'il n'a subi à l'étranger qu'une partie de la peine prononcée contre lui, cette partie sera imputée sur la peine à prononcer.

Gel de fonds (art. 59 du Code pénal)

1. Le juge prononcera la confiscation des valeurs patrimoniales qui sont le résultat d'une infraction ou qui étaient destinées à décider ou à récompenser l'auteur d'une infraction, si elles ne doivent pas être restituées au lésé en rétablissement de ses droits. La confiscation ne sera pas prononcée lorsqu'un tiers a acquis les valeurs dans l'ignorance des faits qui l'auraient justifiée, et cela dans la mesure où il a fourni une contre-prestation adéquate ou si la confiscation se révèle à son égard d'une rigueur excessive. Le droit d'ordonner la confiscation de valeurs se prescrit par cinq ans, à moins que la poursuite de l'infraction en cause ne soit soumise à une prescription d'une durée plus longue, qui est alors applicable. La décision de confiscation fera l'objet d'un avis officiel. Les prétentions de lésés ou de tiers s'éteignent cinq ans après l'avis officiel de confiscation.

2. Lorsque les valeurs patrimoniales à confisquer ne sont plus disponibles, le juge ordonnera leur remplacement par une créance compensatrice de l'État d'un montant équivalent. Elle ne pourra être prononcée contre un tiers que dans la mesure où les conditions prévues au chiffre 1, 2e alinéa, ne sont pas réalisées. Le juge pourra renoncer totalement ou partiellement à la créance compensatrice s'il est à prévoir qu'elle ne serait pas recouvrable ou qu'elle entraverait sérieusement la réinsertion de l'intéressé. L'autorité d'instruction pourra placer sous séquestre, en vue de l'exécution d'une créance compensatrice, des éléments du patrimoine de la personne concernée. Le séquestre ne crée pas de droit de préférence en faveur de l'État lors de l'exécution forcée de la créance compensatrice.

3. Le juge prononcera la confiscation de toutes les valeurs sur lesquelles une organisation criminelle exerce un pouvoir de disposition. Les valeurs appartenant à une personne qui a participé ou apporté son soutien à une organisation criminelle (art. 260 *ter*) sont présumées soumises, jusqu'à preuve du contraire, au pouvoir de disposition de l'organisation.

4. Si le montant des valeurs soumises à confiscation ne peut être précisément déterminé ou si cette détermination requiert des moyens disproportionnés, le juge pourra procéder à une estimation.

Imprescriptibilité (art. 75 *bis*)

Sont imprescriptibles :

1. Les crimes tendant à exterminer ou à opprimer un groupe de population en raison de sa nationalité, de sa race, de sa confession ou de son appartenance ethnique, sociale ou politique;

2. Les crimes graves prévus par les Conventions de Genève du 12 août 1949 et par les autres accords internationaux concernant la protection des victimes de la guerre, auxquels la Suisse est partie, lorsque l'infraction considérée en l'espèce présente une gravité particulière à cause des conditions dans lesquelles elle a été commise;

3. Les crimes perpétrés en vue d'exercer une contrainte ou une extorsion et qui mettent en danger ou menacent de mettre en danger la vie et l'intégrité corporelle de personnes, notamment par l'utilisation de moyens d'extermination massifs, par le déclenchement d'une catastrophe ou par une prise d'otage.

Le juge peut atténuer librement la peine dans le cas où l'action pénale serait prescrite en application des articles 70 à 72.

Infraction contre la vie, particulièrement meurtre et assassinat

Article 111

Celui qui aura intentionnellement tué une personne sera puni de la réclusion pour cinq ans au moins, en tant que les conditions prévues aux articles suivants ne seront pas réalisées.

Article 112

Si le délinquant a tué avec une absence particulière de scrupules, notamment si son mobile, son but ou sa façon d'agir est particulièrement odieux, il sera puni de la réclusion à vie ou de la réclusion pour 10 ans au moins.

Lésions corporelles graves (art. 122)

Celui qui, intentionnellement, aura blessé une personne de façon à mettre sa vie en danger,

Celui qui, intentionnellement, aura mutilé le corps d'une personne, un de ses membres ou un de ses organes importants ou causé à une personne une incapacité de travail, une infirmité ou une maladie mentale permanentes, ou aura défiguré une personne d'une façon grave et permanente,

Celui qui, intentionnellement, aura fait subir à une personne toute autre atteinte grave à l'intégrité corporelle ou à la santé physique ou mentale, sera puni de la réclusion pour 10 ans au plus ou de l'emprisonnement pour six mois à cinq ans.

Brigandage (art. 140)

1. Celui qui aura commis un vol en usant de violence à l'égard d'une personne, en la menaçant d'un danger imminent pour la vie ou l'intégrité corporelle ou en la mettant hors d'état de résister sera puni de la réclusion pour dix ans au plus ou de l'emprisonnement pour six mois au moins.

2. Celui qui, pris en flagrant délit de vol, aura commis un des actes de contrainte mentionnés au premier alinéa dans le but de garder la chose volée encourra la même peine.

3. Le brigandage sera puni de la réclusion ou de l'emprisonnement pour un an au moins, si son auteur s'est muni d'une arme à feu ou d'une autre arme dangereuse.

4. Le brigandage sera puni de la réclusion pour deux ans au moins, si son auteur l'a commis en qualité d'affilié à une bande formée pour commettre des brigandages ou des vols, si de toute autre manière la façon d'agir dénote qu'il est particulièrement dangereux.

5. La peine sera la réclusion pour cinq ans au moins, si l'auteur a mis la victime en danger de mort, lui a fait subir une lésion corporelle grave, ou l'a traitée avec cruauté.

Dommages à la propriété (art. 144)

1. Celui qui aura endommagé, détruit ou mis hors d'usage une chose appartenant à autrui ou frappée d'un droit d'usage ou d'usufruit au benéfice d'autrui sera, sur plainte, puni de l'emprisonnement ou de l'amende.

2. Si l'auteur a commis le dommage à la propriété à l'occasion d'un attroupement formé en public, la poursuite aura lieu d'office.

3. Si l'auteur a causé un dommage considérable, le juge pourra prononcer la réclusion pour cinq ans au plus. La poursuite aura lieu d'office.

Détérioration de données (art. 144 *bis*)

1. Celui qui, sans droit, aura modifié, effacé, ou mis hors d'usage des données enregistrées ou transmises électroniquement ou selon un mode similaire sera, sur plainte, puni de l'emprisonnement ou de l'amende. Si l'auteur a causé un dommage considérable, le juge pourra prononcer la réclusion pour cinq ans au plus. La poursuite aura lieu d'office.

2. Celui qui aura fabriqué, importé, mis en circulation, promu, offert ou d'une quelconque manière rendu accessibles des logiciels dont il savait ou devait présumer qu'ils devaient être utilisés dans le but de commettre une infraction visée au chiffre 1, ou qui aura fourni des indications en vue de leur fabrication, sera puni de l'emprisonnement ou de l'amende. Si l'auteur fait métier de tels actes, le juge pourra prononcer la réclusion pour cinq ans au plus.

Extorsion et chantage (art. 156)

1. Celui qui, dans le dessein de se procurer ou de procurer à un tiers un enrichissement illégitime, aura déterminé une personne à des actes préjudiciables à ses intérêts pécuniaires ou à ceux d'un tiers, en usant de violence ou en la menaçant d'un dommage sérieux, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.

2. Si l'auteur fait métier de l'extorsion ou s'il a poursuivi à réitérées reprises ses agissements contre la victime, la peine sera la réclusion pour dix ans au plus.

3. Si l'auteur a exercé des violences sur une personne ou s'il l'a menacée d'un danger imminent pour la vie ou l'intégrité corporelle, la peine sera celle prévue à l'article 140.

4. Si l'auteur a menacé de mettre en danger la vie ou l'intégrité corporelle d'un grand nombre de personnes ou de causer de graves dommages à des choses d'un intérêt public important, la peine sera la réclusion.

Menaces (art. 180)

Celui qui, par une menace grave, aura alarmé ou effrayé une personne sera, sur plainte, puni de l'emprisonnement ou de l'amende.

Contrainte (art. 181)

Celui qui, en usant de violence envers une personne ou en la menaçant d'un dommage sérieux, ou

en l'entravant de quelque autre manière dans sa liberté d'action, l'aura obligée à faire, à ne pas faire ou à laisser faire un acte sera puni de l'emprisonnement ou de l'amende.

Séquestration et enlèvement

Article 183

1. Celui qui, sans droit, aura arrêté une personne, l'aura retenue prisonnière, ou l'aura, de toute autre manière, privée de sa liberté, celui qui, en usant de violence, de ruse ou de menace, aura enlevé une personne, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.

2. Encourra la même peine celui qui aura enlevé une personne incapable de discernement ou de résistance ou âgée de moins de seize ans.

Article 184

La séquestration et l'enlèvement seront punis de la réclusion, si l'auteur a cherché à obtenir rançon, s'il a traité la victime avec cruauté, si la privation de liberté a duré plus de dix jours ou si la santé de la victime a été sérieusement mise en danger.

Prise d'otage (art. 185)

1. Celui qui aura séquestré, enlevé une personne ou de toute autre façon s'en sera rendu maître, pour contraindre un tiers à faire, à ne pas faire ou à laisser faire un acte, celui qui, aux mêmes fins, aura profité d'une prise d'otage commise par autrui, sera puni de la réclusion.

2. La peine sera la réclusion pour trois ans au moins, si l'auteur a menacé de tuer la victime, de lui causer des lésions corporelles graves ou de la traiter avec cruauté.

3. Dans les cas particulièrement graves, notamment lorsque l'acte a été dirigé contre un grand nombre de personnes, le juge pourra prononcer la réclusion à vie.

4. Lorsque l'auteur a renoncé à la contrainte et libéré la victime, la peine pourra être atténuée (art. 65).

5. Est également punissable celui qui aura commis l'infraction à l'étranger, s'il est arrêté en Suisse et n'est pas extradé. L'article 6, chiffre 2, est applicable.

Incendie intentionnel (art. 221)

1. Celui qui, intentionnellement, aura causé un incendie et aura ainsi porté préjudice à autrui ou fait naître un danger collectif sera puni de la réclusion.

2. La peine sera la réclusion pour trois ans au moins si le délinquant a sciemment mis en danger la vie ou l'intégrité corporelle des personnes.

3. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.

Explosion (art. 223)

1. Celui qui, intentionnellement, aura causé une explosion de gaz, de benzine, de pétrole ou de substances analogues et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la propriété d'autrui sera puni de la réclusion. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Emploi, avec dessein délictueux, d'explosifs ou de gaz toxiques (art. 224)

1. Celui qui, intentionnellement et dans un dessein délictueux, aura, au moyen d'explosifs ou de gaz toxiques, exposé à un danger la vie ou l'intégrité corporelle des personnes, ou la propriété d'autrui, sera puni de la réclusion.

2. Le juge pourra prononcer l'emprisonnement si le délinquant n'a exposé que la propriété à un danger de peu d'importance.

Fabrication, dissimulation et transport d'explosifs ou de gaz toxiques (art. 226)

1. Celui qui aura fabriqué des explosifs ou des gaz toxiques, sachant ou devant présumer qu'ils étaient destinés à un emploi délictueux, sera puni de la réclusion pour dix ans au plus ou de l'emprisonnement pour six mois au moins.

2. Celui qui se sera procuré soit des explosifs, soit des gaz toxiques, soit des substances propres à leur fabrication, ou qui les aura transmis à autrui, reçus d'autrui, conservés, dissimulés ou transportés, sachant ou devant présumer qu'ils étaient destinés à un emploi délictueux, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement pour un mois au moins.

3. Celui qui, sachant ou devant présumer qu'une personne se propose de faire un emploi délictueux d'explosifs ou de gaz toxiques, lui aura fourni des indications pour les fabriquer sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement pour un mois au moins.

Inondation, écroulement (art. 227)

1. Celui qui, intentionnellement, aura causé une inondation, l'écroulement d'une construction ou un éboulement et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la propriété d'autrui sera puni de la réclusion. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Dommages aux installations électriques, travaux hydrauliques et ouvrages de protection (art. 228)

1. Celui qui, intentionnellement, aura détruit ou endommagé des installations électriques, des travaux hydrauliques, notamment des jetées, des barrages, des digues ou des écluses, des ouvrages de protection contre les forces naturelles, par exemple contre les éboulements ou les avalanches, et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la propriété d'autrui sera puni de la réclusion. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Propagation d'une maladie à l'homme (art. 231)

1. Celui qui, intentionnellement, aura propagé une maladie de l'homme dangereuse et transmissible sera puni de l'emprisonnement d'un mois à cinq ans. La peine sera la réclusion pour cinq ans au plus si le délinquant a agi par bassesse de caractère.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Entrave à la circulation publique (art. 237)

1. Celui qui, intentionnellement, aura empêché, troublé ou mis en danger la circulation publique, notamment la circulation sur la voie publique, par eau ou dans les airs, et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes sera puni de l'emprisonnement. Le juge pourra prononcer la réclusion pour 10 ans au plus si le délinquant a sciemment mis en danger la vie ou l'intégrité corporelle d'un grand nombre de personnes.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Entrave au service des chemins de fer (art. 238)

1. Celui qui, intentionnellement, aura empêché, troublé ou mis en danger le service des chemins de fer et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la propriété d'autrui, celui notamment qui aura fait naître le danger d'un déraillement ou d'une collision sera puni de la réclusion ou de l'emprisonnement.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence et par là mis en danger sérieux la vie ou l'intégrité corporelle de personnes ou la propriété d'autrui.

Menaces alarmant la population (art. 258)

Celui qui aura jeté l'alarme dans la population par la menace ou l'annonce fallacieuse d'un danger pour la vie, la santé ou la propriété sera puni de la réclusion pour trois ans au plus ou de l'emprisonnement.

Provocation publique au crime ou à la violence (art. 259)

1. Celui qui aura provoqué publiquement un crime sera puni de la réclusion pour trois ans au plus ou de l'emprisonnement.

2. Celui qui aura provoqué publiquement un délit impliquant la violence contre autrui ou contre des biens, sera puni de l'emprisonnement ou de l'amende.

Actes préparatoires délictueux (art. 260 bis)

1. Sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement celui qui aura pris, conformément à un plan, des dispositions concrètes d'ordre technique ou organisationnel, dont la nature et l'ampleur indiquent qu'il s'apprêtait à passer à l'exécution de l'un des actes suivants :

Art. 111 Meurtre

Art. 112 Assassinat

Art. 122 Lésions corporelles graves

Art. 140 Brigandage

Art. 183 Séquestration et enlèvement

Art. 185 Prise d'otage

Art. 221 Incendie intentionnel

Art. 264 Génocide

2. Celui qui, de son propre mouvement, aura renoncé à poursuivre jusqu'au bout son activité préparatoire, sera exempté de toute peine.

3. Est également punissable celui qui commet les actes préparatoires à l'étranger lorsque les infractions doivent être commises en Suisse. L'article 3, chiffre 1, 2e alinéa, est applicable.

Organisation criminelle (art. 260 *ter*)

1. Celui qui aura participé à une organisation qui tient sa structure et son effectif secrets et qui poursuit le but de commettre des actes de violence criminels ou de se procurer des revenus par des moyens criminels, celui qui aura soutenu une telle organisation dans son activité criminelle, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.

2. Le juge pourra atténuer librement la peine (art. 66) à l'égard de celui qui se sera efforcé d'empêcher la poursuite de l'activité criminelle de l'organisation.

3. Est également punissable celui qui aura commis l'infraction à l'étranger si l'organisation exerce ou doit exercer son activité criminelle en tout ou en partie en Suisse. L'article 3, chiffre 1, 2e alinéa, est applicable.

Mise en danger de la sécurité publique au moyen d'armes (art. 260 *quater*)

Celui qui aura vendu, loué, donné ou laissé à la disposition d'un tiers une arme à feu, une arme prohibée par la loi, un élément essentiel d'arme, des accessoires d'armes, des munitions ou des éléments de munitions, ou en aura fait le courtage, alors qu'il savait ou devait présumer qu'ils serviraient à la commission d'un délit ou d'un crime, sera puni de l'emprisonnement pour cinq ans au plus ou de l'amende, pour autant qu'il ne remplisse pas les éléments constitutifs d'une infraction plus grave.

Atteintes à l'indépendance et à la sécurité de la Suisse

Article 265

Celui qui aura commis un acte tendant à modifier par la violence la constitution fédérale ou la constitution d'un canton, à renverser par la violence les autorités politiques instituées par la constitution, ou à les mettre par la violence dans l'impossibilité d'exercer leur pouvoir, ou à détacher par la violence une partie du territoire suisse d'avec la Confédération ou une partie du territoire cantonal d'avec un canton, sera puni de la réclusion ou de l'emprisonnement pour un à cinq ans.

Article 266

1. Celui qui aura commis un acte tendant à porter atteinte à l'indépendance de la Confédération ou à mettre en danger cette indépendance, ou à provoquer de la part d'une puissance étrangère, dans les affaires de la Confédération, une immixtion de nature à mettre en danger l'indépendance de la Confédération, sera puni de la réclusion ou de l'emprisonnement pour un à cinq ans.

2. Celui qui aura noué des intelligences avec le gouvernement d'un État étranger ou avec un de ses agents dans le dessein de provoquer une guerre contre la Confédération sera puni de la réclusion pour trois ans au moins. Dans les cas graves, le juge pourra prononcer la réclusion à vie.

Article 266 *bis*

1. Celui qui, à l'effet de provoquer ou de soutenir des entreprises ou menées de l'étranger contre la sécurité de la Suisse, sera entré en rapport avec un État étranger, ou avec des partis étrangers, ou avec d'autres organisations à l'étranger, ou avec leurs agents, ou aura lancé ou propagé des informations inexactes ou tendancieuses, sera puni de l'emprisonnement pour cinq ans au plus.

2. Dans les cas graves, le juge pourra prononcer la réclusion.

Article 275 *ter*

Celui qui aura fondé un groupement qui vise ou dont l'activité consiste à accomplir des actes réprimés par les art. 265, 266, 266 *bis*, 271 à 274, 275 et 275 *bis*, celui qui aura adhéré à un tel groupement ou se sera associé à ses menées, celui qui aura provoqué à la

fondation d'un tel groupement ou se sera conformé à ses instructions, sera puni de l'emprisonnement.

Actes exécutés sans droit pour un État étranger (art. 271)

1. Celui qui, sans y être autorisé, aura procédé sur le territoire suisse pour un État étranger à des actes qui relèvent des pouvoirs publics, celui qui aura procédé à de tels actes pour un parti étranger ou une autre organisation de l'étranger, celui qui aura favorisé de tels actes, sera puni de l'emprisonnement et, dans les cas graves, de la réclusion.

2. Celui qui, en usant de violence, ruse ou menace, aura entraîné une personne à l'étranger pour la livrer à une autorité, à un parti ou à une autre organisation de l'étranger, ou pour mettre sa vie ou son intégrité corporelle en danger, sera puni de la réclusion.

3. Celui qui aura préparé un tel enlèvement sera puni de la réclusion ou de l'emprisonnement.

Blanchiment d'argent (art. 305 *bis* du Code pénal)

1. Celui qui aura commis un acte propre à entraver l'identification de l'origine, la découverte ou la confiscation de valeurs patrimoniales dont il savait ou devait présumer qu'elles provenaient d'un crime, sera puni de l'emprisonnement ou de l'amende.

2. Dans les cas graves, la peine sera la réclusion pour cinq ans au plus ou l'emprisonnement. La peine privative de liberté sera cumulée avec une amende d'un million de francs au plus. Le cas est grave, notamment lorsque le délinquant :

a. Agit comme membre d'une organisation criminelle;

b. Agit comme membre d'une bande formée pour se livrer de manière systématique au blanchiment d'argent;

c. Réalise un chiffre d'affaires ou un gain importants en faisant métier de blanchir de l'argent.

3. Le délinquant est aussi punissable lorsque l'infraction principale a été commise à l'étranger et lorsqu'elle est aussi punissable dans l'État où elle a été commise.

Défaut de vigilance (art. 305 *ter* du Code pénal)

1. Celui qui, dans l'exercice de sa profession, aura accepté, gardé en dépôt ou aidé à placer ou à transférer des valeurs patrimoniales appartenant à un tiers et qui aura omis de vérifier l'identité de l'ayant droit économique avec la vigilance que requièrent les circonstances, sera puni de l'emprisonnement pour une année au plus, des arrêts ou de l'amende.

2. Les personnes visées par le 1er alinéa ont le droit de communiquer aux autorités suisses de poursuite pénale et aux autorités fédérales désignées par la loi les indices fondant le soupçon que des valeurs patrimoniales proviennent d'un crime.

2. Autres actes législatifs comprenant des dispositions pénales applicables à des actes de terrorisme

- **Loi sur la lutte contre le blanchiment d'argent dans le secteur financier** (<http://www.admin.ch/ch/f/rs/c955_0.html>)
- **Ordonnance de la Commission fédérale des maisons de jeu du 28 février 2000 concernant les obligations de diligence des maisons de jeu en matière de lutte contre le blanchiment d'argent** (<http://www.admin.ch/ch/f/rs/c955_021.html>)
- **Ordonnance de l'Office fédéral des assurances privées du 30 août 1999 en matière de lutte contre le blanchiment d'argent** (<http://www.admin.ch/ch/f/rs/c955_032.html>)
- **Ordonnance du 25 novembre 1998 de l'Autorité de contrôle en matière de lutte contre le blanchiment d'argent concernant les obligations de diligence des intermédiaires financiers qui lui sont directement soumis** (<http://www.admin.ch/ch/f/rs/c955_033_2.html>)
- **Ordonnance du 20 août 1998 sur le registre de l'Autorité de contrôle en matière de blanchiment d'argent** (<http://www.admin.ch/ch/f/rs/c955_18.html>)
- **Ordonnance du 16 mars 1998 sur le Bureau de communication en matière de blanchiment d'argent** <http://www.admin.ch/ch/f/rs/c955_23.html>)

- **Loi instituant des mesures visant au maintien de la sûreté intérieure** (<http://www.bk.admin.ch/ch/f/rs/c120.html>)
- **Ordonnance du 2 octobre 2000 instituant des mesures à l'encontre des Taliban** (<http://www.admin.ch/ch/f/rs/c946_203.html>)
- **Autres ordonnances mettant en oeuvre les sanctions non militaires du Conseil de sécurité de l'ONU** (<http://www.admin.ch/ch/f/rs/94.html#946.20>)
- **Loi sur le matériel de guerre** (<http://www.admin.ch/ch/f/rs/c514_51.html>)
- **Ordonnance sur le matériel de guerre** (<http://www.admin.ch/ch/f/rs/c514_511.html>)
- **Loi sur le contrôle des biens utilisables à des fins civiles et militaires et des biens militaires spécifiques** (<http://www.admin.ch/ch/f/rs/c946_202.html>)
- **Ordonnance sur l'exportation, l'importation et le transit des biens utilisables à des fins civiles et militaires et des biens militaires spécifiques** (<http://www.admin.ch/ch/f/rs/c946_202_1.html>)
- **Loi sur l'utilisation pacifique de l'énergie atomique** (<http://www.admin.ch/ch/f/rs/c732_0.html>)
- **Ordonnance sur l'énergie atomique** (<http://www.admin.ch/ch/f/rs/c732_011.html>)
- **Loi sur le commerce des toxiques** (<http://www.admin.ch/ch/f/rs/c813_0.html>)
- **Ordonnance sur les toxiques** (<http://www.admin.ch/ch/f/rs/c813_01.html>)
- **Loi sur radioprotection** (<http://www.admin.ch/ch/f/rs/c814_50.html>)
- **Ordonnance sur la radioprotection** (<http://www.admin.ch/ch/f/rs/c814_501.html>)
- **Loi sur les explosifs** (<http://www.admin.ch/ch/f/rs/c941_41.html>)
- **Ordonnance sur les explosifs** (<http://www.admin.ch/ch/f/rs/c941_411.html>)
- **Loi sur les armes** (<http://www.admin.ch/ch/f/rs/c514_54.html>)
- **Ordonnance sur les armes** (<http://www.admin.ch/ch/f/rs/c514_541.html>)
- **Loi sur l'entraide internationale en matière pénale** (<http://www.admin.ch/ch/f/rs/c351_1.html>)
- **Ordonnance sur l'entraide internationale en matière pénale** (<http://www.admin.ch/ch/f/rs/c351_11.html>)
- **Loi sur l'asile** (<http://www.admin.ch/ch/f/rs/c142_31.html>)
- **Loi sur le séjour et l'établissement des étrangers** (<http://www.admin.ch/ch/f/rs/c142_20.html>)
- **Loi sur la coopération avec la Cour pénale internationale** (<http://www.admin.ch/ch/f/ff/2001/539.pdf>)
- **Arrêté fédéral relatif à la coopération avec les tribunaux internationaux chargés de poursuivre les violations graves du droit international humanitaire** (<http://www.admin.ch/ch/f/rs/c351_20.html>)

3. **Constitution fédérale**

Relations avec l'étranger (art. 184, al. 3)

Lorsque la sauvegarde des intérêts du pays l'exige, le Conseil fédéral peut adopter les ordonnances et prendre les décisions nécessaires. Les ordonnances doivent être limitées dans le temps.

Annexe II

Conventions contre le terrorisme
(en gras, conventions auxquelles la Suisse est partie)

- **Convention européenne du 27 janvier 1977 pour la répression du terrorisme**
- **Convention de l'ONU du 14 septembre 1963 relative aux infractions et à certains autres actes survenus à bord des aéronefs**
- **Convention de l'ONU du 16 décembre 1970 pour la répression de la capture illicite d'aéronefs**
- **Convention de l'ONU du 23 septembre 1971 pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile**
- **Convention de l'ONU du 14 décembre 1973 sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques**
- **Convention de l'ONU du 17 décembre 1979 contre la prise d'otage**
- **Convention de l'ONU du 3 mars 1980 sur la protection physique des matières nucléaires**
- **Protocole du 24 février 1988 pour la répression des actes illicites de violence dans les aéroports servant à l'aviation civile internationale**
- **Convention de l'ONU du 10 mars 1988 pour la répression d'actes illicites dirigés contre la sécurité de la navigation maritime**
- **Protocole du 10 mars 1988 pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental**
- **Convention de l'ONU du 1er mars 1991 sur le marquage des explosifs plastiques aux fins de détection**
- Convention de l'ONU du 15 décembre 1997 pour la répression des actes terroristes à l'explosif (*l'adhésion à cette convention fait partie des objectifs du Gouvernement suisse pour 2002*)
- Convention de l'ONU du 9 décembre 1999 pour la répression du financement du terrorisme, signée par la Suisse le 13 juin 2001 (*la ratification de cette convention fait partie des objectifs du gouvernement suisse pour 2002*)

Annexe III

Coordonnées des points de contact du Comité

1. **Suisse**

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